

The Philosophical Analysis Of Rawl's Theory of Justice

Dissertational Research by

Dr. Abdul Wahab Suri



Karachi University Research Forum

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The Philosophical Analysis Of Rawl's Theory of Justice©

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Preface :

This is basically a dissertation of dr.Abdul wahab suri that was submitted to University of Karachi for acquiring doctorate degree.

As we already explained in our previous book related to Dr.abdul wahab suri that he is a key philosopher of the Karachi university philosophical school initiated by Dr, javed akbar Anasri.

Rawls is considered as a one of the great genius of political philosophy in recent times .he is deemed as a torch bearer of liberalism when it was near to death.

Rawls, John (b.1921), American philosopher widely recognized as one of the leading political philosophers of the twentieth century. His A Theory of Justice (1971) is one of the primary texts in political philosophy. Political Liberalism (1993) revises Rawls's theory to make his conception of justice compatible with liberal pluralism, but leaves the core of his conception intact.¹

In opposition to UTILITARIANISM, with its exclusive concern with aggregate happiness, Rawls argues that the fundamental political value is individual rights, or 'justice as fairness'. Rawls proceeds by reviving and generalizing the hypothesis of the SOCIAL CONTRACT as found

¹ Audi,Robert .The Cambridge Dictionary of Philosophy . Cambridge University Press .
Cambridge .1999 .pp :

in LOCKE, ROUSSEAU and KANT. The best political principles, he argues, are those which rational citizens would agree upon if they

were to choose the 'basic structure of society' whilst a 'veil of ignorance' prevented them from knowing their own eventual position within it. According to Rawls they would recognize a general presumption in favour of equality, and hold that 'all social values – liberty and opportunity, income and wealth, and the bases of self-respect are to be distributed equally unless an unequal distribution of any, or all, of these values is to everyone's advantage'.²

Rawls argues that the most reasonable principles of justice are those everyone would accept and agree to from a fair position. Since these principles determine the justice of society's political constitution, economy, and property rules (its "basic structure"), Rawls takes a fair agreement situation to be one where everyone is impartially situated as equals. In this so-called original position everyone is equally situated by a hypothetical "veil of ignorance." This veil requires individuals to set aside their knowledge of their particular differences, including knowledge of their talents, wealth, social position, religious and philosophical views, and particular conceptions of value.³

The essential points of Rawls' work are twofold. He wants to re-establish the pre-eminence of natural rights arguments, so that there will be some values we hold as absolute, principally the right to liberty, and secondly, but only secondly, a right to equality.

He also wishes to change the methodology from the sort of cost-accounting approach held dear by utilitarians, to a more absolute form of argument. In pursuit of the latter he relies heavily on what he calls the

² Rée , Jonathan and Urmson, J. O. (ed) . The Concise Encyclopedia of Western Philosophy . Routledge .oxen.2005.pp: 326 ..327

³ Audi,Robert .opcite .pp ;774.

‘justice as fairness’ argument. One technique for making these points is the ‘veil of ignorance’. Essentially this calls on us to try to pretend that we do not know certain basic social facts about ourselves. Thus we are to imagine a person who is ignorant of his sex, age, class or period of history.

What social institutions would such a person think were fair? The point is that if you do not know whether you are to be a slave or ruler, man or woman, living in the 10th or 20th century, you could not opt for ‘unfair’ rules, lest you ended up on the wrong side of the bargain. Once stated, it is a very simple test of whether an institution is ‘fair’ or not, but no one before Rawls had thought of this way of modernizing the traditional social contract methodology.

Rawls has reinstated a particular form of liberal political theory and, whether it lasts or not, he is one of the very few creative and original contemporary thinkers in the field.⁴

On this basis, Rawls attempted to justify two principles of justice. The first and overriding one states: ‘each person is to have an equal right to the most extensive basic liberty compatible with a similar liberty for others’. The second specifies conditions under which inequalities may nevertheless be justified: ‘Social and economic inequalities are to be arranged so that they are both :

- (a) to the greatest benefit of the least advantaged.
- (b) attached to offices and positions open to all under conditions of fair equality of opportunity.’

Debate about Rawls’ system has concentrated on part (a) of the second principle, which is known as ‘the difference principle’. It implies that

⁴ Robertson, David. Routledge Dictionary Of politics . Routledge .london.2004.pp:418.

inequalities cannot be justified unless they are to the advantage even of the least privileged.

Left-wing critics have feared that this opens the way for attempts to justify unacceptable inequalities. Right-wing critics (such as NOZICK) have argued that, provided the better-off gain their advantages rightfully, they are under no obligation to bother about the disadvantaged.

Either way it seems that 'self-respect', which Rawls regards as 'perhaps the most important primary good', may not be safe in Rawls' system.

Rawls consolidated his positions in *Political Liberalism* (1993); *The Law of Peoples and Collected Papers* (1999); and *Lectures on the History of Moral Philosophy* (2000). See also **LIBERALISM AND COMMUNITARIANISM**.⁵

As we may note after going through his philosophy that The first principle says that certain liberties are basic and are to be equally provided to all: liberty of conscience, freedom of thought, freedom of association, equal political liberties, freedom and integrity of the person, and the liberties that maintain the rule of law. These are basic liberties, because they are necessary to exercise one's "moral powers."

And on the other hand the difference principles that came under severe criticism especially by communarians may be described as :

Rawls's second principle of justice, the difference principle, regulates permissible differences in rights, powers, and privileges. It defines the limits of inequalities in wealth, income, powers, and positions that may exist in a just society. It says, first, that social positions are to be open to all to compete for on terms of fair equality of opportunity. Second,

⁵ Rée , Jonathan and Urmson, J. O .opcite .pp :327.

inequalities in wealth, income, and social powers and positions are permissible only if they maximally benefit the least advantaged class in society.

The difference principle implies that a just economic system distributes income and wealth so as to make the class of least advantaged persons better off than they would be under any alternative economic system. This principle is to be consistent with the “priority” of the first principle, which requires that equal basic liberties cannot be traded for other benefits.

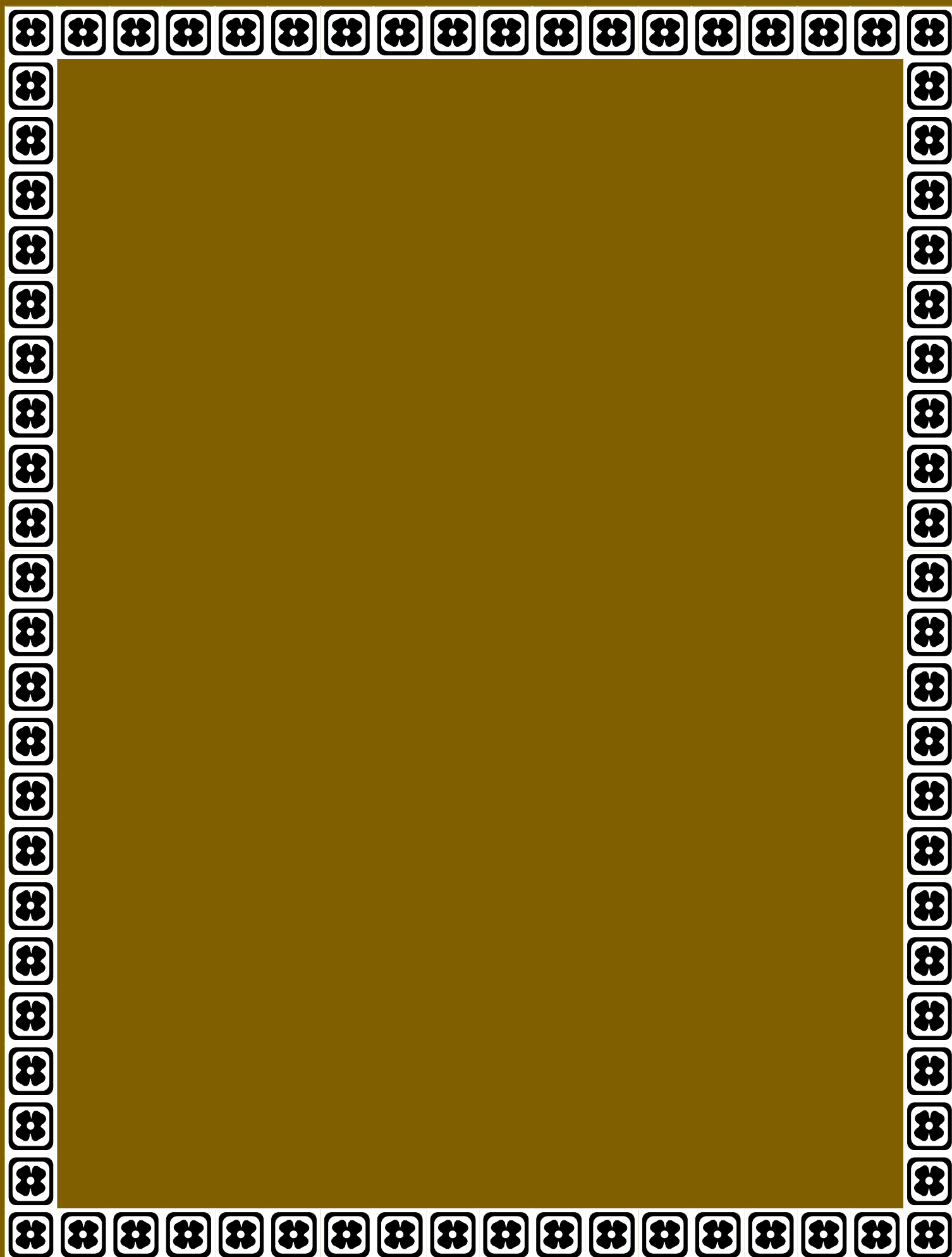
The least advantaged’s right to vote, for example, cannot be limited for the sake of improving their relative economic position. Instead, a basic liberty can be limited only for the sake of maintaining other basic liberties. Rawls contends that, taking the two principles of justice together, a just society maximizes the worth to the least advantaged of the basic liberties shared by all (Theory, p. 205).

The priority of basic liberty implies a liberal egalitarian society in which each person is ensured adequate resources to effectively exercise her basic liberties and become independent and self-governing. A just society is then governed by a liberal-democratic constitution that protects the basic liberties and provides citizens with equally effective rights to participate in electoral processes and influence legislation.

Economically a just society incorporates a modified market system that extensively distributes income and wealth – either a “property-owning democracy” with widespread ownership of means of production, or liberal socialism.⁶

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⁶ Audi, Robert .opcite .pp :775.



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Dr.Abdul Wahab Suri's areas of interests are political theory and post-modernity and he specializes in liberal political theory and its corresponding institutions. He obtained his Master of Arts in Philosophy (1995) and his Ph.D. in Political Philosophy (2004) from the University of Karachi. Dr. Suri's doctorate dissertation focused on "Philosophical Analysis of Rawls' Theory of Justice." He is Fellow of Kakenhi Project: The Research into Bio-ethics in Asia based on Three Levels Structural Analysis Directed by Professor Takao Takahashi Sansee UNESCO-Kumamoto University 2011-2013.

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- 2) *Global Financial Capital VS Islamic conception of Wealth: The Question of Ideological Dominance. Published in Journal of Islamic Business and Management, Vol.05, No.02, Dec.2015.*
- 3) *Is liberty possible? The trajectory of liberal institutionalization of liberty in post-colonial societies. Published in journal of “Biocosmology – neo-Aristotelism” Vol. 5 No.1 Winter 2015*
- 4) *Rise Fundamentalist Discourse and the Trajectory of the Reassertion of Modern Ethos, Paper under publication in the Journal of IPS “ Policy Perspective” Vol. 12, No. 2, 2015.*
- 5) *Liberal Principles of Justice and Emerging Trends if Economic Liberalization: Lesson from Rawlsian Scheme of Distributive Justice. in Market Forces; Journal of Management Business and economics, Vol. IX No.2 December 2014.*
- 6) *Market, Mind and Growth of Knowledge: The dilemma of Post-colonial Health-care apparatus from Hayek’s perspective. Paper presented in 5TH International conference on Mind Studies (ICCSM) 11-12 Nov.2014.Chung-Aug University Seoul Korea.*
- 7) *The exclusive epistemological foundations of irreconciliatory bioethics: the limit of contemporary bioethical discourse. Paper presented in UNESCO-Kumamoto University Bioethics Roundtable, KBRT 7, International Dialogue and the Future*

- of Asian Bioethics, held on 7-8 December 2013, Kumamoto Japan. Under publication
- 8) The Possibility of Bio-Grand-Narrative: The Re-assertion of Modern Ethos at the Juncture of Post-modernity. Paper presented The 6th International Seminar on Biocosmology held on the 9th of December 2013, Kumamoto Japan in Under publication
 - 9) *Right without Choice and the Future of Bio-ethics Discourse in Post-Colonial Society*, Paper presented at the UNESCO-Kumamoto University Bioethics Roundtable “Bioethics: From Theory to Practice” December 8-10, 2012, at Kumamoto University, Japan In EJAIB Vol. 23 - (3) May 2013, www.eubios.info ISSN 1173-2571, Official Journal of the Asian Bioethics p.83 Association (ABA) , Copyright ©2013 Eubios Ethics Institute.
 - 10) “Sacred vs Secular: The Dilemma of Islamic Political Forces in Post Colonial Societies” was presented on 7th Annual Humanities and Social Sciences Conference at Lahore University of Management Sciences (LUMS) February 24-26 2012. (Under Publication)
 - 11) *What is wrong and what is not wrong with fundamentalism paper presented in an international conference Islam in Europe* on November 16-17, 2011 in collaboration with the Hanns Seidel Foundation, Islamabad .(Under publication)
 - 12) Truth and Method: The Dilemma of Postcolonial, Developing Societies in Postmodern Intellectualism paper presented in Seminar: Tradition & Art Karachi, 23rd April 2011 Poppy Seed Gallery & Baytunur in collaboration with Indus Valley School of Art & Architecture and Iqbal Academy Pakistan (Under publication).
 - 13) The Living Death of Modernity: The poverty of Post-modernity in the time of Terror, paper presented in national conference on, Contemporary Paradigms of International-Relations Theory, held on 9th March 2011 in Dept. of International Relations. This is published in Vol: 2, Number: II, January 2011 in Pakistan Journal of International Relations, University of Karachi, Pakistan.
 - 14) “What is living and what is dead in Iqbal” in “Revisioning Iqbal As a poet and Muslim and Political Thinker” Published by Oxford University Press Pakistan 2011
 - 15) The ontological basis of De-ontological liberalism: The limits of Right based politics in *Pakistan Business Review Vol. 12 No.1 April 2010, p.110-133*.
 - 16) “The Liberal Metamorphosis within a Human Rights Framework: The future of the Nation State”, in *Market Forces Vol. 5, No. No.4, Jan. 2010*.
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- 18) The possibility of Meta-History in Market Forces Vol. 2, No. 1, Jan-2007
- 19) "The Future of Communal Identities: Inherent Contradiction between Human Rights Framework and Collective Identities", Ethics, Values & Society: Social Transformation, Conference Proceedings, Edited by Ghazala Irfan Lahore University of Management Sciences , published by Oxford University Press April-2006, pp. 284-299
- 20) "The Incoherences of Multi-Culturalism" In *Pakistan Business Review* Vol. 6, No.1, April-2004.
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- 24) "Deconstructing Gender Discourse", In *Pakistan Business Review* Vol. No.3, Number 2, July 2001 p. 38-52.
- 25) "Identity Crisis and the Dilemma of Progress" in *Philosophy and Social Action* Vol.1, No.1 1st April 1997.
- 26) "Linguistic analysis of the Concept of "LOVE" Part I, in "THEERA" *The Island of Arts*, Vol. 1, No. 1 January 1999.
- 27) "Some Contradictions in Capitalist Democracy", *Pakistan Business Review* Vol. I. No.1, April 1999 P. 42-46.
- 28) "Linguistic Analysis of the Concept of "LOVE", Part II in *THEERA" The Island of Arts*, Vol. 2 No. II May/June 1999 Page 9-11.

1) **POPULAR ARTICLES**

1. “The Possibility of Principle Art: Liberal Perspective” in Theera, Vol.9, No.2, Sept./Oct. 2000.
2. “Art and the Problems of Hermeneutics”, in Theera Vol.4, No. 3, Nov./Dec.1999.
3. “Jamhuriat: IslamiTahreekokaAlamyā” Trans. “Democracy: the Dilemma of Islamic Parties” in Sahil (monthly) Feb. 1997.
4. State Vs Capital “The future of Democracy” in Universal Massage Vol. 20 No. 8/9 August/September 1998.
5. “Is A Piece of Art A Commodity” in “THEERA” THE Island of Arts July/August 1999, Page 7-10

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2. AalmiSarmayaAurAmerikiRiyasat, Sahil Shaban-1421 Hijra P. 41-45
3. JamhooriatKaTaswar-i-AksariyatAurIskaInsaniHuqooqiAurSarmayadari se Taaluq, Sahil- Rabi-ul-Awal-1422 Hijra p. 57-61
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5. QuomiRiyasatkeZawalkisadiSarmayaaaurRiyasatkiKashmakashFaisalakunMarhala Main, Sahil-June 2000, P. 34-39
6. DastooriateYaJamhoriat: JamhoriatYa Islam, Edited by Moulana M. Ahmad , MoulanaMehboob, Ghazali Publishers Nov.2007.
7. Liberal SamadaranaInqalabkiFikriBunyadien, Under Publication by Ghazali Publisher.
8. Latini-AmerikiSamayadaranaInqilab-EkJaiza, Under Publication, by Ghazali Publisher.

BOOK

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1. *The Victory of Poetry Over Philosophy, The Poverty of Post-modernity in the Time of Terror*, To be presented in upcoming conference on American Studies, Organized by Area Study Center for American Studies, Quaid-e-Azam University, Islamabad, Nov. 05-08, 2010.

2. *Is Bio-Ethics without the Morality of Rights? The priority of De-ontologism and the limits of Bio-ethics Discourse* , paper presented Asian Bio-Ethics Association. Ninth Asian Bio-Ethics Conference 3-7 Nov. 2008, Yogyakarta Indonesia, Under Publication.
3. *The Ontological Vs De-Ontological: The Trajectory of Secular Liberal and Religious Political Forces of Pakistan* Paper presented, in Conference Under Publication.
4. Truth and Method: The Dilemma of Post-Colonial Societies at the Juncture of modernity and Post-modernity in final networking conference organized Institute of Peace and Conflict Studies, UPSAM in Jordon near Dead Sea 01 August 2010-4th August 2010.
5. From Hedonism to De-ontologism: The Trajectory of De-ontological bio-ethics. Paper to be presented in Bio-ethics and the concept of Happiness: *The fourth Joint UNESCO-University of Kumamoto. Japan Dec 11-13 2010.*

Ph. D. DISSERTATION

I have received my Doctorate in Political Philosophy, my Ph.D. thesis was “Philosophical Analysis of Rawls Theory of Justice”.

CONFERENCES SEMINARS AND WORKSHOPS

- 1) *Market, Mind and Growth of Knowledge: The dilemma of Post-colonial Health-care apparatus from Hayek's perspective. Paper presented in 5TH International conference on Mind Studies (ICCSM) 11-12 Nov. 2014. Chung-Ang University Seoul Korea.*
- 2) *From the Discovering of Reality to Creating multiple Realities: The Aristotelian Roots of Modern Anthropocentrism. Paper presented in 8TH International Seminar on Bio-Cosmology 12-13 Nov. 2014. Chung-Ang University Seoul Korea.*
- 3) The exclusive epistemological foundations of ir-reconciliatory bioethics: the limit of contemporary bioethical discourse. **Paper presented in** UNESCO-Kumamoto University Bioethics Roundtable, KBRT 7, International Dialogue and the Future of Asian Bioethics, held on 7-8 December 2013, Kumamoto Japan.
- 4) ***The Possibility of Bio-Grand-Narrative: The Re-assertion of Modern Ethos at the Juncture of Post-modernity. Paper presented*** The 6th International Seminar on Biocosmology held on the 9th of December 2013, Kumamoto Japan.
- 5) *Right without Choice and the Future of Bio-ethics Discourse In Post-Colonial Society,* Paper presented at the UNESCO-Kumamoto University Bioethics Roundtable “Bioethics: From Theory to Practice” December 8-10, 2012, at Kumamoto University, Japan

- 6) "Sacred vs Secular: The Dilemma of Islamic Political Forces in Post Colonial Societies" was presented on 7th Annual Humanities and Social Sciences Conference at Lahore University of Management Sciences (LUMS) February 24-26 2012
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- 8) Truth and Method: The Dilemma of Postcolonial, Developing Societies in Postmodern Intellectualism paper presented in Seminar: Tradition & Art Karachi, 23rd April 2011 Poppy Seed Gallery & Baytunur in collaboration with Indus Valley School of Art & Architecture and Iqbal Academy Pakistan.
- 9) The Living Death of Modernity: The poverty of Post-modernity in the time of Terror, paper presented in national conference on, Contemporary Paradigms of International-Relations Theory, held on 9th March 2011 in Dept. of International Relations.
- 10) *The Victory of Poetry Over Philosophy, The Poverty of Post-modernity in the Time of Terror*, To be presented in upcoming conference on American Studies, Organized by Area Study Center for American Studies, Quaid-e-Azam University, Islamabad, Nov. 05-08, 2010.
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- 12) *The Ontological Vs De-Ontological: The Trajectory of Secular Liberal and Religious Political Forces of Pakistan* Paper presented, in Conference Under Publication.
- 13) Truth and Method: The Dilemma of Post-Colonial Societies at the Juncture of modernity and Post-modernity in final networking conference organized Institute of Peace and Conflict Studies, UPSAM in Jordan near Dead Sea 01 August 2010-4th August 2010.
- 14) "Representing Islam", International conference organized by British Council held in Watford U.K. from 23 June – 29 June 2003. Paper presented Philosophy in Pakistan.
- 15) Workshop organized by British Council held in Darbal Hall, Sharton Hotel 20th Dec. 2003. Paper presented Incoherence of Multiculturalism.
- 16) Ethics Values and Society: Social Transformation, International Conference held in LUMS in April 2004. Paper presented "Future of Communal Identities:

- Inherent Contradiction between human rights framework and collective identities”.
- 17) “History Conference” An International Conference organized by Pakistan Historical Congress in May 2004. Paper presented The Possibility of Meta-History.
 - 18) “The Roots of Terrorism in Post-Colonial Literature”, An International Video Conference among British, Hungarian, Bulgarian and Pakistani Participants. Respond the Article of Alicia Bohemier.
 - 19) An international conference organized by the Department of Philosophy University of Karachi in Nov. 2005. Paper presented State Metamorphosis in Human rights framework.
 - 20) Quality in Education Teaching leadership in changing Times, An International conference at Aga Khan University Institute of Educational Development Feb 21-23-2006. Paper presented The Poverty of Methodology.
 - 21) Final Net Working Conference: Peace and Conflict Studies, in Jordan near Dead Sea. 1st to 4th Aug 2010. Paper Truth and Method: Dilemma of Post-colonial Societies.

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4. Head of the Department of Philosophy from September 2004-uptill Dec 2006.
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6. I have developed a course on Bio-Ethics for Aga Khan University and have taught that course along with my colleagues from Oct. to Dec. 2005
7. I was the Student Advisor in the Department of Philosophy from January 2002-2004.
8. I was the Assistant Editor of ‘Philosophy and Social Action’ Vol. 1 No. 1 April 1997.
9. I am the Member of the Editorial Board of “THEERA” the Island of Art and the Incharge of its Philosophy section (Sophistaya).
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 3. Modernism-VS-451
 4. Post Modernism-VS-452
 5. Hermeneutics-VS-551
 6. Aesthetics-VS-552-A
 7. Muslim Philosophy-VS-552-B
13. I am visiting faculty member at IBA and developed a course on Islamic Political Theory.
14. I am visiting faculty member at INDUS Valley School of Art and Architecture

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Contents

Acknowledgement
Abstract
Introduction

CHAPTER – 1

1. Rawls' Principles of Justice	1
1.1. Original position and the principles of justice	5
1.2. Reflective equilibrium	10
1.3. Two principles of justice	13
2. Analysis of the principles of justice	16
2.1. concluding remarks	27

CHAPTER – 2

The Institutional Dimension of the “Principles of Justice”	29
--	----

Section – 1

1. Four stage sequence	30
------------------------	----

Section – 2

2. Principles of Justice and their corresponding Institutions	40
2.1. Institutionalization of liberty	40
2.2. Institutionalization of the distributive justice	46
2.3. The background institutions for distributive justice	50
2.4. Distributive justice and state / market relationship	53
3. The problem of civil duty and its implication	58
3.1. Concluding remarks	67

CHAPTER – 3

Rawls as a liberal	69
--------------------	----

Section – 1

1.1. John Locke (1632-1704)	73
1.2. I. Kant (1724-1804)	82
1.3. J.S. Mill (1806 – 1873)	88

Section – 2

2. Rawls and Liberal Legacy	101
2.1. Justice as fairness in relation to Locke	102
2.2. Justice as fairness in relation to Kant	104
2.3. Justice as fairness in relation to utilitarianism	117
3.0. Concluding remarks	124

CHAPTER – 4

Rawls in relation to liberal communarians	126
---	-----

Section – 1

1.0. The communitarian critique of Rawls	127
--	-----

Section – 2

2.0. The communitarian relationship with Rawls	142
3.0. Concluding remarks	147

CHPATER – 5

Post modernist interpretation of Rawls	148
Concluding remarks	163
Conclusion	165
References	183
Bibliography	201

Acknowledgement

This thesis is the result of a continuing discussion of moral and political theory with a group of my friends, colleagues and teachers (which is being working for the last ten years). I have discussed the issues of political philosophy over the years, both in conversations and writings with Dr. Javed Akbar Ansari and Ali Mohammad Rizvi. I benefited greatly from their criticism, support and encouragement. Their influence now extends over most of my life and I always consider my self as their incompetent student.

I was fortunate enough to have a generous, loving, tolerant and incisive supervisor like Dr. S.M.A. Sayeed. I was lucky to spend almost five years with him during my Ph.D. research. I am most deeply indebted to Dr. Sayeed for his guidance and supervision.

Special gratitude is due to Abdul Raheem Afaqi and Farhan Hanief Siddiqui for their guidance and support at every stage of my work. I am also thankful to my friends Shanawaz, Kashif and Faisal Siddiqui for their help, encouragement and support. I am also grateful to all my faculty members especially Dr. Arfa Faried, Dr. Shabeer Ahsan, Dr. J.I. Ameer, Dr. Z.H. Baber and Zulfeqar Ali Mehar for their support. I am also thankful to Abdul Qadeer Bukhari to dedicatedly compose all my thesis work on time.

Lastly my most whole hearted gratitude is for my father to whom I owe everything, and my wife Sumera (Mughal) and my son Talha who spared me the time and opportunity to carry on the work.

Abstract

Rawls considers “justice as fairness” as a political conception of justice. Although the normative dimension of the “theory of justice” is not ignorable. It is an acknowledged fact that, there has been a great deal of confusion over what he really means by “political”. In “post theory of justice” texts Rawls tries to make his conception of the “political” clear¹. The critical analysis of his work unveils his insistence on the political dimension of the theory of justice. The deep understanding of his conception of the “political” reveals: firstly the source of his motivation to be committed to the political conception of justice: secondly the root cause of the misinterpretation of his theory of justice and thirdly and most importantly the organic relationship among the issues of public justifiability, overlapping consensus and pluralism.

The sustenance of this organic whole demands an intellectual attitude, which prioritizes politics (i.e. democracy) over philosophy for the establishment of just socio-political order. There by Rawls considers “public justifiability” as the primary condition of justice as fairness. However the “political consensus” is the secondary dimension of the just order, which sustains the legitimacy and stability of socio-political order. The public justifiability is the manifestation of the convictions which have been emerged from the historical experiences of a political community. The incorporation of convictions and considered judgments of a community in the socio-political fabric is necessary to sustain the social order. However the “political consensus” is the institutionalization and formalization of the considered judgment according to the political demand of that society.

Rawls claims that in the concrete political domain we cannot adopt one final, abstract and comprehensive philosophical standpoint to defend a political conception of justice. The historical experiences of modern democratic culture have

¹ See Rawls J. The Domain of Political overlapping consensus.

changed the direction of intellectual struggle. The intellectual defeat of modern epistemology makes it impossible to provide an ontologically grounded and epistemologically defended universalist defense of any conception of justice. The need of a workable conception of justice is the historical condition of such a culture, which emerges from the wars of religion, reformation, counterreformation, industrialization, social mobilization and democratic form of government. Rawls believes that the reward of this historical experience is the general consensus on the “principle of tolerance”. The agreement upon the principle of tolerance demands the plurality of comprehensive philosophical doctrines and equal legitimacy of the realization of incommensurable conceptions of good in principle. He claims that justice as fairness provides a practical political procedure, which satisfies the demand of modern democratic societies. Pluralism entailed by industrial societies is presumed to be the permanent features of modern democracies, which challenges the priority of philosophy over democracy. In this thesis we will try to excavate the philosophical foundations of the Rawlsian theory of justice (1971), and also try to identify the philosophical shift in his position under the light of some of his major critiques.

INTRODUCTION

The ideas of liberty and equality seem to reinforce each other but in the political sphere the extension of one eventually limits the sphere of the other. The best possible compromise between these competing political ideals (i.e. equality and liberty) is the central problem of much of contemporary moral and political theory. Liberals claim to provide a political reconciliation to the co-existence of the issues of equality and liberty. An important problem associated with the issue of liberty / equality is that liberty as well as equality are not quantifiable but it is necessary to presume that they are. The quantifiability of equality / liberty is a “postulate” necessary for the constitution of concrete political structures. This presumed quantifiability principle raises the question of the demonstration of the lesser or greater liberty / equality in different political arrangements. Thus the extension of the sphere of one and the restriction of the other becomes a matter of interpretation. In contemporary political philosophical discourse liberalism, conservatism, socialism, libertarianism, communitarianism, liberal-communitarianism etc. are all different sort of interpretations regarding the reconciliation of the relatively incompatible issues of liberty and equality in a single framework. Libertarian interpretations like that of Nozick, Hayak etc. are tilted towards liberty, whereas socialist. Socialism prioritizes equality as in case of Marx, Pfeffer¹. Some moderates take middle position regarding the balance between equality and liberty considered as liberals, We can put Rawls in this third category. In his theory of justice Rawls derives two principles of justice which address the issue of liberty and equality respectively.

In order to understand his philosophical position we consider “A Theory of Justice” (1971) as a basic text of Rawls.

¹ See Pfeffer, Marxism, Morality and social justice. Preston university pres, Preston 1995 in which he tries to prove that Rawls is a socialist.

In the beginning of the book² he precisely identifies the major concern of his theory of justice. The first objective of moral philosophy according to Rawls is to describe the individual's intellectual capacity to judge between the just and the unjust. However he claims that a systematic and rational description of one's moral capacity is a highly complex enterprise. "Justice as fairness" according to Rawls, reflects the true moral intuitions of contemporary societies. The conception of justice emerges from his theory of justice provides a procedure to institutionalize moral intuitions and considered judgments which are compatible with his two principles of justice. The abstract principles of justice which are derived by Rawls are claimed to be embedded in the everyday judgments. Therefore the two principles of justice are prioritized and considered as criterion to evaluate, revise and analyze moral judgments. Rawls compares the structure of moral philosophy to that of linguistic one. For instance in language the grammatical structure provides a systematic and coherent set of rules to make a conversation meaningful. Any linguistic expression which violates the basic grammatical rules (of that particular language) will be meaningless in that linguistic community. However very few people know about those abstract grammatical rules. Similarly according to Rawls very few people know the principle behind their normative claims or stands regarding the fairness of justice. Rawls believes that since "moral capacity is extra-ordinarily complex",³ so the evaluation of one's moral capacities is a highly theoretical endeavor which transcends everyday value judgments. The derivation of the principles requires rigorous, systematic formulation and sophisticated mathematical treatment of moral judgments and convictions. This does not mean that the principles of justice ignore our everydayness. The moral sensibility is characterized by everyday judgments but Rawls imposes certain constraints on the derivation of the principles. Only those judgments are considered valid which are made by individuals who have the ability, opportunity and desire to decide correctly. The identifying criterion of their judgments

² A theory of justice by J. Rawls (1971)

³ See theory of justice page 46

must be absolutist (i.e. not arbitrary). The relevance of the judgments is determined by its potentiality of generalization and deliberation.

Furthermore he introduces the idea of “reflective equilibrium”. This is basically a process to reconsider or readjust convictions or considered judgments, which are provisionally fixed. The mechanism of reflective equilibrium provides the basis of compatibility between considered judgments and institutionalizable principles of justice. According to Rawls justice as fairness not only provide a theory to accommodate our moral intuitions, rather it also provides a mechanism, which on the one hand constantly revises, reframes and reconsiders our convictions and on the other hand sustains the principle of public justifiability. Justice as fairness provides an institutionally possible socio-political framework of self-correction and self-analysis. The individual’s sense of justice is examined by the compatibility between his moral judgments and “reflective equilibrium”.

Finally Rawls claims that justice as fairness has been contrasted with utilitarianism for a number of reasons out of which two are important:

- a) The utilitarian view is intellectually dominant.
- b) The appealing capacity of utilitarianism (as a socio-political theory) is very high, irrespective of the fact that the utilitarian strand proves itself to be highly illiberal and coercive in nature. He claims that it is not the theoretical superiority of utilitarian thought rather the unavailability of a constructive alternative, which provides the theoretical basis of just and fair socio-political procedure. Justice as fairness does not only have the theoretical capacity to intellectually repudiate utilitarianism rather it can also successfully be institutionalized within our contemporary socio-political, economic framework.

In order to understand Rawls intellectual position specifically within the context of “A theory of justice” (1971) we need a

philosophical analysis of his theory of justice. The nature of his work is interdisciplinary due to which, his theory has been interpreted and also misinterpreted in so many different ways. On the other hand Rawls' conscious reluctance to unveil his philosophical position opens up the realm of misguided critique of his theory of justice.

The purpose of this thesis is to excavate the intellectual position of Rawls in the light of some of his major critiques. The first three chapters are pre-dominantly descriptive in nature in which we try to understand his theory of justice within the context of liberal framework. It seems that justice as fairness has evolved from the political thought of Locke, Kant and Mill. Rawlsian work (despite his conscious avoidance of ontological, epistemological and axiological debates) provides a sophisticated and profound version of liberal political theory compatible with the practical demands of contemporary world.

Rawlsian disassociation from any philosophical theory appears to be the strength of his theory. It is due to the success and profundity of Rawlsian approach that his theory has been interpreted in so many different ways. His work is relevant even for people like Peffer who considers him to be socialist. On the other hand Rawls' work is equally important for Rorty who is apparently post-modernist.

In the first chapter we will focus on the conceptual tools, which are necessary to understand his theory of justice in general and principle of justice in particular. In this chapter we will try to understand the derivation of his two principles of justice (i.e. 1 Equal freedom for all. 2a) Distribution of resources is such in which that the greatest benefit goes to the least advantaged section of the society, 2b) Equal opportunity to compete).

In order to understand the Rawlsian derivation of the principles of justice it is very important to differentiate the, "summary" conception of rules from that of the "practice" conception, because both sort of rules play an important role in the constitution of a well – ordered society. The summary rules have

been extracted from the generalization of social actions. The actions provide content for the formalization of summary rules. Since actions are prior to the rules therefore in the summary rules the question of “what ought to be” is resolved from “what is”. Due to such derivation of rules from the “de-facto” practices of society, it is argued that there is no absolute moral authenticity of these socially extracted rules.

On the other hand the derivation of practice rules is possible in abstraction. These rules are not the product of mere inductive generalizations. The practice rules are derived from a position, which is transcendental to the given situation. The rules are derived in the realm, which is embryonically independent of historical, cultural and social factors. The derivation of practice rules assumes an archimedean vantage position because during practice one cannot derive these rules. As these (i.e. summary and practice) rules manifest themselves in human actions their distinction generates a two dimensional approach regarding the normative evaluation of a socio – political function.

The significance of Rawlsian conception of justice is that, it provides a legitimate realm for the reconciliation of summary and practice rules within a coherent, workable political procedure.

The second chapter will be focused on the institutional side of the principles of justice. Rawls justifies constitutional democracy as the institutional form of the first principle and he justifies private property as the institutional form of the second principle. The principle of equal freedom for all is substantiated in the form of equal political participation, which simply means one man one vote. The prioritization of his first principle is institutionalized in the form of constitutional democracy. The principle of equal opportunity simply means the equal possibility of accumulating primary goods and provide theoretical legitimacy of private property economy. The first part of second principle i.e. “difference principle” justifies active state intervention as a redistributive measure to sustain liberal public order, which faces the danger of disintegration due to the

enhancement of relative poverty as an unintended consequence of the prioritization of the principles of equal liberty and opportunity.

In the third chapter, we will try to intellectually situate Rawls in the liberal traditional framework. In the first section we will provide a brief overview of liberal thought expounded by Locke, Kant and Mill in relation to Rawlsian theory of justice. In the second section justice as fairness will be interpreted as an evolutionary version of Lockean contractarian theory, Kantian categorical imperative and Mill's theory of social cooperation. Rawls derives two principles of justice on the basis of which he has been interpreted as a defender of universalizability of liberalism, a-social individualism, moral subjectivism and interventionalist-state-mechanism. We will try to understand his conception of person, compatible with the rationale of the principles of justice. In this chapter we will also try to unveil the theoretical corollaries or implications of his conception of the person (i.e. universality of the principles of justice, moral subjectivism / objectivism).

The last two chapters will be of critical nature. In the fourth chapter, we will overview the communitarian critique of Rawls, particularly regarding his conception of the person and the universalisability of his principles. In this chapter, we will also discuss the communitarian relationship with Rawlsianism.

In the fifth chapter we will discuss the post-modern interpretation of Rawls. Specifically Rortrian perspective of Rawlsian conception of person, moral subjectivism / objectivism and universality / particularity will be discussed. In conclusion we will try to identify the possibility of intellectual shift in Rawls position in the light of our analysis.

CHAPTER-1

Rawls' Principles of Justice

Rawls's a conception of justice is paradigmatically interdisciplinary in nature. There are certain of streams flowing side-by-side in Rawls' theory of justice for instance, Rawlsian contractarian strand, the epistemological dimension of his theory, the derivation and the analysis of the principles of justice, the relation between Rawlsian political philosophy and its relation with other social sciences, the demarcation between the sphere of legality and morality etc. In this chapter we will concentrate on the conceptual tools of Rawls' theory (i.e. original position and veil of ignorance), which sustain the structure of his political conception of justice. The chapter is of descriptive nature. We will concentrate on the derivation and the implications of the principles of justice.

Rawls believes that in order to derive fair principles of justice our starting point must relate to our common shared experiences. Unlike Plato, in Rawlsian system, justice is the first virtue of social institutions¹. In Aristotelian framework justice is defined in terms of an ideal or virtue, along with the guiding principles for its application in different state of affairs. Traditionally it is believed that, "justice is a concept of complex structure within which we should distinguish between a constant formal element and a varying material element"². This means that the formal aspect of justice is prior to the actual concrete material situation. The "truth-value" of such a theory of justice is not dependent on its moral worth, popular appeal, socio-economic benefits and psychological up bringing of the individuals. The purpose of such a theory is to establish a society which depicts the "model laid up in heavens"³ irrespective of the fact, whether this theory is concretized or not. It simply means that the "truth-value" of a theory does not dependent on its perfect actualization in concrete life situations. This implies that the conception of good presumed in metaphysical conception of justice is independent of

its realization⁴. Rawls is not satisfied with the prioritization of any conception of “good” in order to derive fair principles of justice. He rejects the metaphysical conception of justice in favour of a political conception of justice. Although the dominant mood of “A theory of justice” is normative, but Rawls constantly insists that, he presents a political conception of justice. He believes that if we consider justice as fairness as moral theory then the possibility of misinterpretation will be tremendous. Rawlsian identification of the general features of “justice as fairness” helps to understand the political nature of his conception of justice. Justice as fairness presumes a moral conception, which is worked out for the basic structure (i.e. socio-political and economic) of a democratic society, but such a conception is supposed not organically linked with any specific epistemological, ontological, religious or moral doctrine. In short justice as fairness is said to be not a comprehensive philosophical doctrine rather it is a concatenation of certain basic ideas which are imbedded in democratic culture. Justice as fairness provides a fair procedure in which social, economic and political institutions fit together in an organic whole of social cooperation. However principles of justice are applicable to the basic structure of a society and cannot explain individual’s transactions. Rawls has claimed that although principles of justice guarantee, “principle of liberty” as a first principle even then there are certain legitimate constraints an individual liberty imposed through the institutionalization of the principles of justice. This means that Rawlsian conception of freedom is not an anarchic conception of freedom and it ensures and institutionally protects the demarcation of public and private spheres of life through a body of rights.

Rawls considers “justice as fairness” as the first virtue of a society. He thinks that if any socio-political structure of a society (no matter how efficient, effective and well-arranged a system is) overrides the inviolable right of individual’s freedom (i.e. right of self-determination) then it must be abolished. This implies that individual liberty is the precondition for the sustenance of justice as fairness. This right cannot be override for political bargaining or for material benefit of the society as a whole.

Rawls believes that "...being first virtue of human activities truth and justice are uncompromising"⁵. According to Rawls the determination of the sphere of basic rights and duties eventually influences a healthy coordination among the contractors of social associations, which directly or indirectly effects the distribution of material resources, the realization of efficiency principle" and most importantly the stability of the institutions (which sustain the structure of justice as fairness). In order to cope with these issues Rawls claims that the formal conception of justice (theoretical) must be concretized in definite socio-political institutions. This institutional framework avoids arbitrary distinction regarding the assessment of basic rights and duties and maintains a balanced "distributive framework" among different social groups. The institutional structure of justice as fairness also ensures that the stabilizing forces must exist within the system for the sustenance, promotion and protection of the system.

Rawls has differentiated his approach from that of Locke, Rousseau and Kant. He acknowledges justice as fairness as the continuation of the contractarian theory but unlike the traditional contractarian approaches the basis of contract is not the establishment of a society or government. Rather the derivation of the formal and fair principles of justice for the basic structure of society is the real objective of the "original agreement". He considers Locke, Kant and Mill as liberals due to their commitment to individual autonomy. He believes that the defining characteristic of liberalism which contrasts it from the thought of Plato, Aristotle and Christian thinkers (i.e. Augustine, Aquinas etc.) is the possibility of the plurality of the conceptions of the good in a free democratic culture. According to Rawls the conception of the person presumed by utilitarian is a major obstacle in the realization of pluralism. Rawls has categorically claimed that "classical utilitarianism and a contemporary version of utilitarianism imply a conception of person which makes this doctrine incompatible with the presupposition that there are many rational conceptions of the good"⁶. He believes that justice as fairness presumes a neutral stance regarding the prioritization of any particular conception of the good. However principles of

justice are necessary for the constitution of a well-ordered society. The institutionalization of the individual rights of self-determination guarantees the actualization of the public conception of justice. By public conception of justice he simply means the conception of justice which emerges from the will of the people and recognizes “will to freedom” as the only legitimate public good. Secondly the socio-economic institutions must be compatible with the publically derived conception of justice or in other words must not resist the actualization of the principles of justice. On the basis of these conditions Rawls implies that the principles of justice reflect the moral intuition of a society and most importantly the basic institutions of a society should not be instrumentalized as a means to realize any specific / particular conception of the good. Because the prioritization of a particular conception of good necessarily affects the body of rights. Rawls believes that the fairness of a just order demands that system of rights must be independent of any generalized conception of good. However he claims that the role of the basic socio-political institutions “is to set-up a framework in which citizens may further their ends, provided that these ends must not violate the prior and independent principles of justice”⁷. This Rawlsian prioritization of the principles of justice should not be confused with the prioritization of a particular conception of the good. Justice as fairness is a procedural conception of justice and the fairness of the procedure is dependant on the neutral⁸ principles of justice. This follows that the prioritization of the principles of justice is necessary for the sustenance of a body of rights, which is independently derived from any specific conception of good, and it also sustains the plurality of incommensurable conceptions of good.

At this stage question rises why does Rawls consider justice as fairness as the only uncompromising truth? The initial exposition of his theory reveals that the prioritization of individual liberty reflects the moral intuitions of the society in which Rawls was living. Justice as fairness acknowledges this prioritization as a first principle of social justice. Rawls emphasizes the need to develop a framework of justice, along with the proper institutional backing, in which different assertions about the

primacy of justice (which are the manifestation of Rawlsian intuitive convictions) can be assessed, analyzed and interpreted.

The Rawlsian conception of society is that of a contractually structured association of mutually self-interested individuals. The self-sufficient association presumes certain rules for the distribution of material resources among the members of this association. Since individuals are essentially self-interested therefore the possibility of conflict (regarding the distributive share of material resources) is organically embedded in such a society. There is a need for a just and systematic socio-political and economic arrangement for the determination of fair distribution. Rawls believes that the principles behind such socio-political organization are the principles of social justice. The elementary function of these principles is to "... assign rights and duties in the basic institutions of society"⁹. The Rawlsian notion of a well-ordered society presumes two conditions: firstly, everyone believes that the other members accept the same principles of justice; secondly the basic socio-political institutions generally satisfy and are known to satisfy these principles. The theoretical corollaries of the Rawlsian conditions for the existence of a well-ordered society are: a) the social contract takes place among free, rational and self interested individuals (Individual's freedom and rationality are considered as the structural preconditions of their (self-interested individuals) associations), b) the fundamental principles provide the foundations for the constitution and interpretations of further principles and consociational ventures, c) the essential concern of these principles, is to determine the sphere of basic rights, duties and the just distribution of material welfare.

In the following section we will discuss the basic conceptual tools of Rawlsian theory of justice which provide the content for the derivation of Rawlsian principles of justice. In the next section we will workout the implications of the two principles of justice.

1.1. Original Position and the principles justice

Rawlsian conception of the original position and the principles of justice are derivatives from the work of Aristotle, Locke, Kant and Mill but at the same time stands apart from them. Aristotle prepares us to follow the general rules for the deliberate actions (conducts), because they are the legitimate routes to happiness. However he recognizes the significance of the subjective influences regarding the sanctity of “virtuous actions” and the limitations of generalization. On the other hand Kant’s project is to discover a universally valid principle of conduct and the idea at the heart of his “categorical imperative”, is that of duty. But the problem is that, this provides the general guideline, and moral status of an act is evaluated merely on the basis of its universalizability. Mill advocates the individual’s freedom of judgments, subject to the constraint of the greatest happiness for the greatest numbers”. Rawls seeks to transcend all of them by his idea of the “original position” which provides an abstract sphere for the consociational agreement regarding the basic principles of justice we ought to heed. Rawls believes that the original position is the redefined form of the “state of nature” which is presumed by the contractarian theorists, but unlike traditional contractarian models the original position is not an actual historical state, rather it is a hypothetical choice situation to derive fair, objective and just principles of justice. The abstraction of the fair principles of justice is the sole objective of the original agreement. It is a hypothetical contract situation or a bargain place for free, rational and equally self-interested individuals. The contractors in the original position decide rationally, “once and for all what is to count among them as just and unjust”¹⁰.

The limited knowledge available in the original position legitimizes the objectivity and neutrality of the chosen rules. On the other hand the theoretical instrument which makes this selection possible is the “veil of ignorance”. The veil of ignorance “blocks out knowledge of who they are, their place in history, their talents, skills and their individual’s “plans of life” or conceptions of the good”¹¹. A concise version of the

information available in the original position can be presented as:

- a) Each person in the original position knows the general facts about human nature.
- b) The motivational instrument which is provided in the original position (to the contractors) is their “self-interestedness”. It is unquestionably presumed that the contractors must be purely motivated to maximize their own self-interest and welfare in society. In Rawls’ own words “... in drawing up the conception of right the parties take their interests into account as best they can”¹².
- c) The contractors in original position act and choose rationally.
- d) The original position is a bargaining position for mutually dis-interested and rational contractors.

Justice as fairness begins with the “choice” of the most fundamental principles of justice which provide a “fair” basis of socio-political institutions. These chosen principles of justice guide our choice of a fair constitution and enacted legislation. Justice as fairness does impose certain constraints which Rawls calls reasonable, on the individuals’ capacity to choose any particular conception of the good. The legitimacy of the constraints is dependent on its consistency with the original agreement, which has taken place in a hypothetical choice situation among equally free rational and self-interested contractors.

The original agreement provides the basis of a public conception of justice. Rawls believes that socio-economic inequalities stratify social structure. Such stratifications do affect individuals’ “choice of good”, virtues and meanings of good life. Since individuals are not placed in social hierarchy by their choices, therefore the derivation of the fair principles of justice must not be influenced by both individual’s own conception of good and his social position. It is because of this reason the principles of justice are derived by the contractors who are ignorant about their own conceptions of good and social position. Thus the socio-political obligations are not externally imposed upon the

people, according to Rawls, rather the general recognition of the original agreement (i.e. principles of justice) justifies its public acceptance. It means that the obligations are self-imposed by rational and autonomous individuals.

Rawls offers two necessary constraints, on the choices made in the original position, firstly no one knows his own position in society which is to be governed by the principles of justice being selected and secondly each individual must choose principles of justice with the full realization and recognition of the fact that the selected principles are those under which he and all his descendents will have to pass their lives. Thus we can say that the “essence” of the fairness lies in this fundamental instrument (veil of ignorance) of Rawlsian theory. Rawls believes that the individual’s specific knowledge about his own conception of good and resources, is one of the major cause of social injustice. The individual’s knowledge of his specificities necessary influences his choice of the principles of justice. Therefore Rawls believes that the abstraction from the particularities of the contractors is a fundamental condition of the fair bargain. On the basis of above mentioned constraints Rawls claims, that “the principles of justice are the result of a fair agreement or bargain”¹³. The veil of ignorance controls variables like contingent social positions, circumstances, religious, racial, cultural differences, talents and natural endowments that affect the possibility of fair bargain. The rationale of the original position is claimed to be such that no one is able to reduce the interest of others in favour of his own. In original position the choice of the principles must be “rational” (in the Rawlsian specific sense of “being rational”). Rawls presumes that the contractors in the original position are rational and by rationality he simply means the most effective and efficient mean to realize one’s end. This conception of rationality prevails in economic theory and Rawls acknowledges that he has interpreted rationality in this narrow sense¹⁴. The justification he has behind the assumption (that individuals act rationally in original position) is that the contractors in “choosing between principles each tries as best he can to advance his interest”¹⁵. It implies that

there is an organic relationship between being rational and being self-interested. Rawls claims that the choice of the two principles is determined by the contractors' urge that "which conceptions of justice are most to their advantage"¹⁶. He thinks that self-interested attitude is a rational expression of an individual in uncertain conditions of original position. Rawls presumes certain characteristic of a rational person which he must have, for instance a coherent order of preferences and the desire to maximize the chances to successfully execute them, he is not suffered from the feeling of envy, he has a sense of self-respect and his conception of good, virtues, ends and plane of life are not dictated by others. In short we can say that the conception of rationality emerges from these constraints is "mutually disinterested rationality"¹⁷. It is important to note that the parties (in their self-interested pursuit of advancing their system of ends) are not inventing any alien conception of justice which negates the public conception of justice. It is also worth mentioning that it is a condition of rationality that the contractors must be committed with agreement they have signed in original position. Rawls believes that being rational individuals they "will not enter into agreement they know, they cannot keep or can do so only with great difficulty"¹⁸.

So mutual disinterestedness and self-interestedness are the key motivational devices which make original agreement possible in uncertain conditions of original position. Rawlsian dependence on "self interestedness" as a motivational instrument is of pragmatic nature, otherwise the contractual conditions will not be realized. Interestingly it does not imply from his discussion that he considers individuals as essentially self-interested and mutually disinterested, rather it is a rational attitude they will adopt (in uncertain conditions of original position) to derive fair, neutral and just principles of justice. He thinks that self-interestedness will not be the only motivational instrument in a well-ordered society where as, the "principle of obligation" and "principle of natural duty"¹⁹ will also play their role in social mobilization and cooperation. He categorically claims, "the motivation of the persons in the original position must not be confused with the motivation of persons in everyday life"²⁰. He

believes that in everyday life individuals can if they wish to exploit situations for their own specific interests. Similarly individuals in their everydayness may sacrifice their interest by their own sense of morality or benevolence. Rawlsian selection of “mutual dis-interestedness” as a motivational instrument (to insure the effects which are morally attractive to him) is purely pragmatic because he considers it simplistic and if some one asked him, why does he avoid to select the combination of “benevolence with the veil of ignorance” the answer is that, there is no need for so strong a conditions”²¹. Rawls considers the selection of such combination will be countered productive because “it would defeat the purpose of grounding their theory of justice on weak stipulations, as well as being incongruous with the circumstances of justice”²².

The principles of justice, derived in the original position, determine a legitimate sphere of choices, which an individual makes in concrete life situations without violating the just order of a well-ordered society. The principle also provides an initially agreed criterion of justice for the assessment of ever changing social, political and economic conditions. Rawls acknowledges that since the contextuality, beliefs and interests of the contractors do affect their choices and interpretations therefore the principles of justice must be chosen under certain conditions for instance. a) all contractors in the original position have equal bargaining capacity to derive fair principles of justice, b) it is assumed that the contractors in the original position are morally equal and possess an equal sense of justice, c) although the original position is a hypothetical choice situation (that can never be actualized) even then its constraints and conditions are accepted as legitimate in the derivation of the principles of justice, d) the original position is a theoretical instrument for the universalization of pluralism, and e) the contractors in the original position are ignorant about their own conceptions of the good and the resources they have. The structure of original position is such that it must provide compatibility between the principles of justice and moral intuitions of contemporary societies. For instance Rawls claims that “we are confident that religious intolerance and racial discrimination are unjust”²³.

Original position provides a framework necessary for the attainment of reflective equilibrium.

1.2. **Reflective Equilibrium**

According to Rawls, reflective equilibrium is simply the process of mutual adjustment of considered judgments or principles. The original position is an ideal initial situation which not only expresses reasonable conditions but also the principles of justice (derived in the hypothetical choice situation) “which match our considered judgments duly pruned and adjusted”²⁴. Rawls believes that “equilibrium” is the state in which our principles of justice coincide with judgments about our firmest convictions of justice. On the other hand by “reflective” he means that, “we know to what principles our judgments confirm and the premises of their derivation”²⁵. The Rawlsian use of the term “equilibrium” is very revealing in order to understand his political approach. The theory suggests that in order to sustain equilibrium there is a constant, conscious and reflective process of mutual adjustment of principles (i.e. the principles which are further derived from the two abstract principles of justice). By adjustment of the principles he simply means the compatibility between the primary principles (i.e. two principles of justice) and secondly principles which are derived from the principles of justice. Therefore Rawls acknowledges that “this equilibrium is not necessarily stable”²⁶. This implies that there is an open possibility of the readjustments of the conditions imposed on the hypothetical choice situation which may lead us to revise our judgments”²⁷. The structure of original position is similar to the traditional contractarian approach to differentiate essential and accidental conditions regarding the derivation of original agreement. The determination of essential conditions directly affects the dialectics of the system. These unchangeable and essential aspects of the theory transform into obstacles and adversely affect the evolution of the system, thus eventually threaten the very existence of the system. Rawls introduces the idea of reflective equilibrium to protect the dialectics of the system (i.e. its capacity to successfully respond to the ever changing socio-political phenomena) without threatening the essential features of the theory. Reflective reason is an analytical

device which analyzes the contemporary ideas of justice and make them compatible with the rationale of the principles of justice.

It is generally believed that justice as fairness provides principles which match our considered judgments. Rawls claims that it is an over simplified version of justice as fairness, to consider it a moral theory, which institutionalizes our moral intuitions in the contemporary socio-political environment. Justice as fairness not only provides an institutional framework to accommodate moral intuitions but also provides an institutional structure which provides an opportunity (to an individual) to frame, revise and rationally pursue his own conceptions of the good. It implies that the fairness of an institutional structure is dependent upon the fact that how much freedom an individual has, to frame or revise his considered judgments or initial convictions. In justice as fairness “reflective reason” makes such revision possible. Rawlsian prioritization of the two principles of justice reveals that the two principles meet the demand of reflective equilibrium. They not only reflect the moral intuitions of his society and protect the interest of every contractors in the original position but also guarantee equal freedom to revise, reframe and pursue one’s own conception of good. One of the defining characteristics of the original agreement is that “no one obtains everything he wants”²⁸. This implies that taking account of the “other” is necessary in the original position. In Rawlsian framework social cooperation is required for survival and furthering one’s own specific interests in a contractually structured society. In this way Rawls condemns radical egoism. He acknowledges that in society every one is free to pursue his own conception of the good not as an isolated individual but as a participant of a democratic culture²⁹. That’s why he claims that the state of equilibrium is achieved by the free exchange of thoughts, ideas and their compatibility with the body rights which protects the citizen “to further their interest in the same way”³⁰. It is important to note that the state of equilibrium is not necessarily right, legitimate and just. The moral legitimacy of the equilibrium is dependent upon the circumstantial conditions which are establishing the equilibrium. Rawls presumes that the

conditions and constraints of original position are enough to provide moral basis to the reflective equilibrium, which is established in justice as fairness. That's why Rawls claims, "justice as fairness as a theory of moral sentiments as manifested by our considered judgments in reflective equilibrium"³¹. Rawls acknowledges that moral sentiments do affect our actions and intentions but the structure of original position does not presume any comprehensive moral doctrine. Secondly, it does not resemble actual life situation. It is just a hypothetical choice situation to accommodate, the plurality of incommensurable conceptions of the good. Thus the derivation of the principles of justice must not be governed by any specific moral theory but at the same time it is necessary that, "the principles that would be accepted play the requisite part in our moral thoughts and actions"³². Rawls claims that justice as fairness is not an attempt to institutionalize any comprehensive moral doctrine but at the same time he claims that principles of justice reflect the moral intuitions of at least the society in which he is working. This position seems to be paradoxical because if justice as fairness is morally neutral then how can principle of justice reflect the moral intuitions of a society. Rawls responds that, justice as fairness is morally neutral in the sense that it does not prioritize one conception of moral goodness over other. But the problem is that treating all conceptions of good as equally moral is itself a moral point of view. The acceptance of the incommensurability of the conception of moral good is itself a moral perspective. This moral perspective is organically linked with the rationale of the original position. Thus we can say that justice as fairness is not a-moral, its moral dimension affects the basic structure of a society rather than the individualistic pursuit of moral goodness.

The psychological contingencies of the individual contractors are not incorporated in the analysis or the conclusion which is being taken place in the original position, because "the argument aims eventually to be strictly deductive"³³. Rawls commitment with deductive logic reveals that his approach is intentionally analytical in nature. However the psychological contingencies of the contractors are taken into consideration and are also properly accommodated in the structure and constraints of the original

position. Rawls claims that he tries to keep his argument rigorous but he realizes that in this struggle, his approach unhappily or unfortunately becomes “highly intuitive throughout”³⁴.

1.3. Two principles of justice

The two principles of justice which Rawls put forward as likely to be chosen are:

First Principle

“Each person is to have an equal right to the most extensive system of basic liberties compatible with a similar system of liberties for all”³⁵.

Second Principle

“Social and economic inequalities are to be arranged so that they are both a) to the greatest benefit of the least advantaged, and b) attached to offices and positions open to all under conditions of equality of opportunity”³⁶

These principles of justice, derived by the formal contractors, are claimed to be the best possible attempt to reconcile the paradoxical co-existence of the issue of equality and liberty. The two principles assimilate liberty related aspects as well as equality related aspects of liberalism in a single socio-political framework. However, in the establishment of his institutional structure, liberty has lexical priority over equality. Rawls explicitly states that, the first principle is prior to the second, because he believes that liberty can only be constrained for the sake of liberty itself. The conditions he presumes for the justification of his restricted conception of liberty are;

- 1) “a less extensive liberty must strengthen the total system of liberty shared by all;
- 2) a less than equal liberty must be acceptable to those with lesser liberty”³⁷.

This means that Rawlsian conception of liberty is not an anarchic conception. Its political predication legitimizes certain constraints. Rawls optimistically believes that these political

constraints eventually yields a better political environment for the enhancement of the freedom of the individual.

In the second principle, part “b” is lexically prior to the part “a”. This reveals that in order to sustain the equal system of liberty, Rawls gives priority to fair opportunity over the distribution of material resources. This means that he is not willing to accept any scheme in which welfare of the least advantaged increases but as a result of this the liberty of conscience, personal property and political participation is constrained. Rawls considers inequalities as natural because individuals are different in their mental and physical abilities and also in their natural endowments. He accepts that they have not determined their social location rather they have been unequally placed in different families, races, environment and social position.

At this stage question arises if inequalities are natural then what is the justification for the principles of justice to ensure fair equality of opportunity. The claim of fair equality of opportunity seems to be fictitious because fair competition is not possible among unequally equipped (physical or mental) individuals. Rawls acknowledges that the inequalities directly affect individual’s choice of the fair principles of justice. Therefore he emphasizes the need of a hypothetical realm in which at least formal equality holds. In Rawlsian framework original position serves this purpose. Thus justice as fairness presumes a formal equality among the contractors. The veil of ignorance neutralizes the affect of social, economic and aesthetical difference on the choice of fair principles of justice. The conception of equality which is compatible with the rationale of the original position is of formal nature. Rawls claims that original position is a bargaining process among equally rational, free and self-interested individuals. In this bargain, Rawls presumes that everyone, “acting rationally in his own self-interest seeks to get as good a deal as possible for himself”³⁸. It implies that individuals are not equal in their skills, abilities, natural endowments and social status but in original position they are all equally free and self-interested. Therefore he considers equality of opportunity as an intrinsic part of his two principles of justice.

In this context equality of opportunity performs two functions a) it ensures the sanctity of individual freedom (the eradication of the equality of opportunity as an integral part of the principles of justice, falsifies the claim of the priority of equal freedom for all), b) it provides a legitimate realm in which self interestedness is to be actualized in its full possible realization for the derivation of the fair principles of justice. On the other hand, Rawls acknowledges that since individuals are unequal in their mental and physical abilities therefore it is naturally not possible to sustain the equality of opportunity in practical domain. Rawls does not equate justice to efficiency. He believes that justice has priority over efficiency and welfare. Although in his second principle, equality of opportunity is prior to the “difference principle” this prioritization does not imply that the principle of efficiency is lexically prior to the second principle as a whole (because Rawls does not prioritize equality of opportunity in absolute sense). He recognizes inequality of opportunity under certain conditions:

- a) “an inequality of opportunity must enhance the opportunities of those with lesser opportunity.
- b) an excessive rate of saving must on balance mitigate the burden of those bearing this hardship”³⁹.

If we take a glance of Rawlsian lexical order we will find that first principle is lexically prior to the second principle, the opportunity principle is lexically prior to the difference principle (because of the priority of first principle) and the difference principle is lexically prior to the efficiency principle (because of the priority of the first principle). Thus the violation of the opportunity principle is justified on the basis of the prioritization of the difference principle over efficiency principle.

The violation of the opportunity principle is legitimate if inequality of opportunity enhances the opportunities of the least advantaged section of the society. On the other hand the material benefits of the inequality of opportunity must be used to maximize the well being of the least advantaged group. In short we can say that Rawls considers inequalities as natural and tries to legitimately accommodate them in his distributive scheme.

Although the equality of opportunity has lexical priority over the distribution of material resources even then Rawls claims that the greatest benefit will go to the least advantaged section of society.

In his theory of justice Rawls tries to answer three questions; a) how to interpret two principles of justice as the foundation of a coherent and fair conception of justice? b) what are the possibilities of a coherent institutionalization of the principles of justice in a constitutional democratic framework? c) does the distributive scheme provided by the principles of justice is compatible “with the common notion of justice,”⁴⁰. The organic whole of constitutional socio-political and economic arrangement defines the body of rights which determines the legitimate sphere of individual’s liberties and life prospects. Rawls accepts that socio-economic inequalities are the inevitable aspect of liberal societies, but he claims that those inequalities are welcome which eventually maximize the advantage of every individual engaged in such a social arrangement. In his own words “inequalities must be to the advantage of the representative man for each relevant social position. They should improve each such man’s expectations”⁴¹. The mechanism of expectations is dependant upon the body of rights acknowledged and institutionalized by the basic social structure. In order to assess the pattern of expectations as a whole one has to choose some social positions as reference point. A representative of the least advantaged section of the society has been taken as a reference point to judge the pattern of expectations as a whole. The system of institutional inequalities is necessary to be taken into consideration because in Rawlsian view the basic structure of the socio-political and economic structure affects the life-prospects of the individual. It is important to note that Rawlsian distributive scheme does not consider socio-economic inequalities as essentially unjust. However the inequalities which are generated by the institutional structure of a well ordered society is needed to be resolved in order to maintain fair and just social order. In this regard he believes that the distribution should not be governed by the principle of efficiency rather by the difference principle. He

claims that institutionally generated inequalities are healthy, “if the greater expectation of the more advantaged when playing a part in the working of the whole social system improve the expectations of the least advantaged”⁴².

2. Analysis of the Principles of Justice

In the Rawlsian framework, the legitimacy of the appropriate claims of the citizens regarding the conception of the good (which are incommensurable) is understandable within the context of a conception of the person and its relationship with his primary good index. Primary goods can be contrasted to natural goods, which the individual possesses naturally like vigor, intelligence, health, imagination etc. According to Rawls, primary goods are resources to concretize any rational plane of life. Rawlsian idea of primary goods (income, power, wealth and authority) is crucial to understand the, priority of the right over the good the limitation of distributive justice and the nature of the basic institutions of a democratic society. Rawls considers primary goods as morally neutral. He thinks that in a well ordered society one cannot realize his specific conceptions of good without having these primary social goods. In his framework, primary good index provides the public basis of interpersonal comparisons for the determination of the social positions of the citizens. This implies that primary good index provides a criterion to assess an individual's social position, i.e. it helps to determine the relevant social position as a reference point, which is necessary to construct a distributive mechanism (compatible with the constraints which are imposed by the principle of justice).

The calculus and the criterion of well-being are the serious problems of modern political theory in general and liberal political theory in particular. The utilitarian solution to the problem is difficult to institutionalize because it is derived from a comprehensive conception of moral doctrine which according to Rawls undermines the fairness of just order. Rawls believes that primary goods are not only morally neutral but they also quantifiable. He believes that the objective institutionalization of primary goods index is practically possible. There by the unjust

distribution of these primary good is not only assessable but also institutionally demonstrable as unjust. The prioritization of these primary goods (unlike utilitarian's good) does not affect the realization of individual's specific conceptions of good. If someone rejects these prioritized primary goods as legitimate means to realize his specific conception of good even then he can not oppose the institutional prioritization of these primary good⁴³. Due to the neutrality of primary goods, they are presumed by the contractors as a function of bargain in original position. This means that "an index of primary goods is part of the two principles of justice and therefore part of their agreement when these principles are adopted"⁴⁴.

In a well ordered society equality of liberty and opportunity is formally established, however inequal distribution of primary goods is permissible⁴⁵. In this context the primary good index determines the features of the basic socio-political institutions. It provides the framework to interpret the formal rights and liberties which are prioritized in the two principles of justice.

The difference principle governs the distribution of primary social goods. The primary good index provides the social basis of "self-respect" (which itself one element of index good). Although Rawls gives too much importance to self respect as a primary social good⁴⁶ he interestingly has placed self-respect at lowest in the priority list of these primary social goods. In order to understand this Rawlsian contradiction we have to understand the social basis of self-respect. Rawls emphasizes the importance of self-respect "in support of his first principle and its lexical priority"⁴⁷. According to him in a well ordered society people do not respect themselves on the basis of their material well being. Moreover "the basis of self-esteem in a just society is not then one's income share but the publically affirmed distribution of fundamental rights and liberties"⁴⁸.

It is important to note that primary good index is decisive to identify the least advantaged section of the society. Rawls acknowledges that "social mobility" may be the product of efficient and effective institutionalization of the principles of justice but it will not be incorporated in the list of the primary

goods. Therefore he considers least advantaged group as “those who are born into and who remain in that group throughout their life”⁴⁹.

It is presumed that in a well ordered society there is a general understanding regarding the meaning of the advantageous position of the citizens. Therefore in a society which is regulated by the principles of justice, appropriate claims are the claims to primary goods. Moreover, the legitimacy or the relative merits of those claims are judged, assessed and settled by their compatibility with the principles of justice. Rawlsian prioritization of the primary good index should not be confused with the prioritization of any comprehensive conception of good. In this framework the precedence of one conception of good (other than primary goods) over other is unjust, because the individual’s private conceptions of good are not only presumed to be conflicting but also incommensurable with each other. However the primary goods are necessary means to realize individual’s specific conceptions of good.

The conception of the “right” and its relation to the “good” determines the nature of ethical and political theory. The liberals consider the individual as an antecedently individuated self. Therefore the “good” becomes a matter of the arbitrary expression of preferences. Historically, the meaning of the good is determined by what Rawls calls the “impartial spectator”. This impartiality legitimizes the imposition of one man’s order of preferences or desires over that of all others. This prioritization of the “good” negates an individual’s “value difference and it is by this construction that many persons are fused into one”⁵⁰. Rawls believes that this sort of methodology has been adopted by the utilitarian version of liberalism in its most sophisticated form. Since the prioritization of the good (maximization of satisfaction) eventually determines a particular or preferred system of desires which eventually negates some basic rights. So Rawls thinks that there is a need to contrast the “right” from the “good”.

Principally liberty has been contrasted to satisfaction, utility and welfare, however Rawls believes that one should not absolutely negate the significance of the other. In Rawlsian conception of justice liberty does have precedence over welfare and satisfaction⁵¹. This prioritization is justified by the neutrality of “right” which every individual possesses (the right of self-determination) by fact of being human. Thus it is unjust to sacrifice the freedom of an individual for the maximization of general welfare. Thus justice as fairness has a two dimensional approach. Firstly, it is an attempt to sustain this neutral right which is the precondition of the legitimate realization of any scheme of desires or preferences. Secondly, justice as fairness is an attempt to counter-balance liberty and welfare. Rawls prioritizes liberty but does not negate the significance of the distribution of material welfare in the constitution of a just social order.

Another contrast between the good and the right is that in a well-ordered society people are allowed to have different conceptions of the good, but they are not allowed to have different conceptions of the right. Justice as fairness presumes a society in which all the “citizens hold the same principles of right”⁵². This is the neutrality and universality of rights which justifies the claim of equal liberty for all.

As we have already discussed the first principle is concerned with the liberty related aspect of the theory. The derivation of the first principle is possible due to the contractor’s ignorance of his own conceptions of the good. Individuals are ignorant about their own substantive conceptions of the good but being self-interested participants of the bargaining process, it is in their interest that they remain capable of “...framing revising and rationally pursuing conceptions (of the good)”⁵³. Thus it is necessary to endorse equal freedom for all so that they can frame, revise and unobstructedly pursue their own (personal) conceptions of the good. This reveals another contrast between the good and the right. If the prioritization of any particular conception of the good (for instance, greatest happiness for the greatest number) becomes the only governing principle for the

construction of social order. The prioritized good eventually fails to sustain the diverse possibilities of pluralist societies. In order to counter this deficiency, justice as fairness prioritizes the “right” over the “good”. The legitimacy of such prioritization lies in the fair principles of justice. Rawls claims that “the principles of social choice, and so the principles of justice are themselves the object of an original agreement”⁵⁴. This means that the prioritization of “right” actually de-legitimizes any absolute principle for the justification of social organization. There are two natural outcomes of this prioritization of the right, pluralism and antecedented individualism. Thus we can say that the equality of basic liberties sustains the equality as well as the triviality of all substantive goods. It is only freedom, according to Rawls, which justifies the pursuit of any individualistic conception of the good. In the private sphere everybody has a right to pursue his own conception of the good subject to the constraint that the only public good is freedom.

The second principle is concerned with the equality-related aspect of the theory. It is derived on the basis of the abstraction of the knowledge about the material resource one has or his social position. Before analyzing the first part of Rawls second principle, which he usually calls as difference principle Rawls presumes a social structure in which the first principle and the second part of the second principle i.e. equal freedom for all, and equal opportunity to compete are already being realized. This means that “there is one class of equal citizens which defines a common status for all”⁵⁵. The Rawlsian system presumes formal equality, i.e. a system of rights which treats every citizen equally before law. This means that before taking substantive inequalities (i.e. socio-economic inequalities) into consideration, formal equality is presumed to be established through the lexical priority of the first principle over second principle.

The substantive inequalities are the result of an unequal distribution of income, power, wealth and authority. Rawls believes that the inequalities of these primary goods are “just if and only if they are the part of a larger system in which they

workout to the advantage of the most unfortunate representative man”⁵⁶.

Rawlsian distributive scheme is based on certain assumptions; firstly the inequalities of socio-economic system are *chain-connected*, which means that the rise in the expectations of the least income group eventually raises the expectations of all social positions. Secondly Rawls presumes that the inequalities of the social structure are also *close-knit*. This means that it is not possible to raise the expectations of one social group in isolation. The rise and fall of the expectations of different social groups are directly proportional to each other. Lastly the inequalities are such that there is no *loose - jointedness*⁵⁷. This means that there is no social position which remains unaffected with the rise and fall in the expectation of one social position in the chain. However he acknowledges that there are certain cases in which the middle group remains unaffected but the possibility of such cases in a democratic society is negligible. Thus on the basis of these assumptions Rawls claims that “everyone benefits from an inequality which satisfies the difference principle”⁵⁸.

Rawls has defended the priority of his principles of justice on two different levels:

- a) At the level of original position
- b) At the level of institution

His defence at institutional level is purely consequential because he thinks that the validity of the principles of justice can be tested by working out “their consequences for institutions and note their implications for fundamental social policy”⁵⁹.

However his defence from the stand point of original position is relatively deductive while from the stand point of original position he considers principles of justice “as the maximin solution to the problem of social justice”⁶⁰.

The term “maximin” simply mean “maximum minimorum”⁶¹. The maximum rule helps “to rank alternatives by the worst possible outcomes”⁶². Thus the maximin rule provides a

methodology to choose such a “choice the worst out come of which is superior to the worst outcome of the other”⁶³.

The adoption of maximin rule in original position is attractive due the peculiar constraints imposed in the structure of original position. The choice of the two principles of justice seems to be rational in uncertain conditions of original position (from the stand point of the least advantaged group).

The maximin rule directs the attention of the contractors to the worst social existence (i.e. least advantaged group) that can be possible and encourages them to minimize the cost of being in that worst condition and to decide in the context of that unfortunate situation. Thus the self interested and mutually disinterested individuals accept the second principle which apparently constrains their absolute freedom, which is acknowledged in the first principle. So the lesser freedom is acceptable for such mutually disinterested contractors if the anti-egalitarian consequences maximizes the benefits of the least advantaged group.

It is obvious that the max-min principle offers constraints on to the right of property or accumulation, which naturally restricts individual freedom. The question arises why do the contractors necessarily choose the second principle in the original position? One possible answer is that since the individual is ignorant about his own social position in the upcoming society, therefore being rational and self-interested he legitimately withdraws from his absolute right of accumulation. The contractor accepts that the greatest benefit should go to the least advantaged section of the society. This sort of derivation reveals Rawls’ preconceived notion of rationality. The rationale of the original position presumes two principles which have not been chosen but presumed by the contractors in the original position. They determine the parameters of the hypothetical choice situation⁶⁴. The principles are: a) The principle of “rational choice”. b) The principle of “deliberative rationality”

The principle of rational choice justifies the derivation of the two principles of justice, whereas deliberative rationality provides the justification of the individual's pursuit of one's own conception of the good and also the ordering of one's own preferences and desires. There is a harmony between the principles of rational choice and that of deliberative rationality. In the Rawlsian framework deliberative rationalization must be "consistent with the counting principles and other principles of rational choice"⁶⁵. It is important to note that the rationale of the original position presumes certain constraints which make the principles of justice culturally acceptable and compatible with the prevailing convictions about justice.

In an uncertain condition the rational behaviour of an individual is based on:

- i) Knowledge of his wants.
- ii) Knowledge of the shape of his (convex) utility function.
- iii) Quest for the maximization of satisfaction subject to the constraint of risk aversion.

Although in the original position individuals are ignorant about their own specific conceptions of the good they know how to act rationally. They know that they must sustain their capacity to revise their conceptions of the good in an uncertain condition in which they do not even know their own specific conceptions of the good. Rational behaviour is that by which individuals try to maximize satisfaction while averting risk, and thus they choose the principles of justice. Rawls believes that being rational persons they must choose the first principle in order to sustain their capacity to frame, revise and pursue their own specific conceptions of the good of which they are ignorant. On the other hand they must choose second principle because being rational the contractors maximize their opportunities in the worst condition and minimize the cost of being in that worst condition.

A re-distributive mechanism (governed by the difference principle) of primary goods to improve the capacities of those

unfortunates who are left behind by cultivating their natural abilities (which are necessary to cope with the demand of competitive societies) at the cost of fortunate sections of society. Rawls acknowledges that apparently “difference principle” contradicts the lexical priority of the first principle, because the least advantaged section of a society is subsidized at the cost of the fortunate group (most advantaged group). So that difference principle limits the sphere of freedom of fortunate group. In his defence however Rawls claims that since in the original position individuals are ignorant about their own social position therefore being rational individuals, “they will find it to their interest to agree to a principle”⁶⁶ which apparently maximizes the living standard of least advantaged at the cost of upper income groups. The difference principle does not negate the efficiency principle in absolute sense, but it is argued that the subsidization of one group cannot be possible without taxing the upper income groups. Since the natural abilities and talents of individuals are unequally distributed therefore it is generally argued that claim of equality of opportunity” is fictitious. It is further argued that those who belong to higher income groups cultivate their crud abilities or skills due to the availability of better resources, services and socio-cultural environment therefore the institutional assurance of equality of opportunity is meaningless among unequally equipped individuals. In justice as fairness “the two principles of justice define distributive shares in a way compatible with efficiency”⁶⁷. The subsidization of the least advantaged at the cost of the most efficient group is not the rejection of efficiency principle rather he presumes that “when the difference principle is perfectly satisfied, the basic structure is optimal by the efficiency principle”⁶⁸.

The second principle also legitimizes the priority of the right over the good. Justice as fairness rejects the criterion of distribution according to moral desert. Rawls believes that it is difficult to “distinguish between moral desert and legitimate expectations”⁶⁹. However in Rawlsian procedural conception of justice the individuals can claim “fair shares” of resources according to the rights given to them and the compatibility of their claims to the existing socio-political arrangement. In a well-

ordered society the distributive share of the individual should not be dependent on the moral worth of a particular conception of the good which he chooses in his private life. This means that in theory there is no one to one correspondence between the distributive mechanism and moral preference of the individuals. Rawls believes that in order to sustain the mechanism of justice as fairness it is necessary to emancipate the distributive function from the moral desert principle. Because there is no direct relationship between the moral worth of an individual and his productive capability, therefore Rawlsian distributive mechanism remains neutral regarding the moral states of an individual. Since justice as fairness remains neutral regarding the question of good, thus the issue of the distribution of primary goods is resolved on the basis of the body of rights, which has been prioritized over individual's conceptions of good. It is important to note that this distributive mechanism presumes a well-ordered society, the society in which the socio-political institutions "are just (and are also) publicly recognized as just"⁷⁰. Since this distributive mechanism reflects the public conception of justice, it means that, it cannot be a-moral, but Rawls believes that the moral worth of the presumed conception of the good by the individual has trivial significance. The co-relation between moral worth and distributive shares can also be interpreted within the context of the "retributive" conception of justice. This presumes that those who belong to well-off sections of society must possess superior moral claims. This moral superiority provides them greater opportunity to increase their distributive shares against those who violate the laws of the just society and are justly punished by deprivation. This argument confuses morality with legality, most of the times it happens that morality and legality does not match. This is one of the reasons that the rationale of justice as fairness does not allow an interpretation of the distributive principle in the retributive conception of justice.

The individual's conception of the good is determined by "what is for him the most rational-long-term plan of life given reasonably-favorable circumstance"⁷¹. The primary goods according to Rawls are necessary instruments for actualizing any rational desire. Since different people have different conceptions

of the good therefore the distribution of primary social goods is a core concern of justice as fairness.

The contractors in the original position bargain about the possession of the fair share of these primary social goods. So Rawls explains the prioritization of primary goods in the context of his “thin theory of the good”. The thin theory presumes that the knowledge of the, “thin conception of the good” is not blocked by the veil of ignorance. Therefore the process of bargain (in original position) presumes primary good index as a substantive criterion that qualifies the legitimate distributive shares according to the patterns of expectations of different social groups.

Rawls argues that since individuals are different in their abilities, capacities and potentialities therefore, their plan of life also differs but he believes that “primary goods are necessary means (to realize any system of ends)”⁷². The determination of the weightage of these primary goods is a problematic issue but he argues that the lexical order of the principles of justice simplifies this problem. Rawls believes that the weightage of the primary social goods and their (distributive) proportional combination is known by us intuitively⁷³. This implies that the rational ordering (of primary goods) of the representative individual of the least advantaged group can only be known by “our intuitive capacities”⁷⁴, although “self-respect” is lower in the priority list of social good, it is important to note that the priority of this social good is not determined by the second principle rather by the first. “Rawls appeals extensively to self-respect in support of his first principle and its lexical priority”⁷⁵. However he acknowledges that the protection of formal equality of basic liberties is not the ultimate guarantee for the sustenance of the individual’s sense of self-respect, because economic inequalities eventually generate a consciousness, which negates the possibility of self-respect.

Rawls has also tackled the problem of the individual’s “criterion of expectation” through the distribution of primary goods. He rejects the utilitarian criterion of individual expectations. In his

perspective the expectations of individual should be defined in terms of the primary social goods rather than in term of pleasure or satisfaction. It appears that the distribution of these primary goods is the concern of equality related aspect of his theory of justice, because primary social goods are the legitimate instrument to actualize substantive conception of the good presumed by formal, rational and self-interested individuals. But we can not ignore the organic relation between primary goods and the liberty-related aspect of the theory of justice, because if individuals do not possess the primary social goods then the claim “to be free” is fictitious. To be free in the real sense is the ability to accumulate these primary goods. The primary goods are the concrete form of freedom and one can never realize one’s freedom except thought the accumulation of these goods. Rawls claims that “it is rational to want those goods whatever else is wanted. Since they are in general necessary for the framing and the execution of a rational plan of life”⁷⁶. In reality these are the pre-conditions for freedom. Thus if we provide an equitable distribution of these primary goods then what we are promoting is freedom.

Concluding Remarks

The conception of justice which emerges from Rawlsian principles of justice is essentially a liberal conception of justice. In his framework the individual alone determines what is (privately) good for him, subject to the constraint that the only public good is freedom. Rawls’ emphasis on the issue of distribution creates an illusion that he is more committed with equality then liberty. In his framework the distribution of material resources becomes the fundamental question because his theory of justice is concerned with the allocation of primary goods as the only means to realize freedom. He tries to reinterpret the meaning of the individual’s substantive conception of the good. If one rejects the right of self-determination regarding the autonomous pursuit of the substantive conception of the good, then the issue of distribution becomes irrelevant. The prioritization of distributive justice is based on the right of self-determination. This is so because if the individual is free to pursue his own (private) conception of the

good, he can only operationalize his freedom on the basis of primary social goods. Thus the distributive principle becomes the fundamental principle of a liberal society because it ensures the concrete manifestation of the right of self-determination.

Rawls believes that the institutionalization of the two principles of justice is possible only in a private property economy and constitutional democracy. In our next chapter we will focus on the institutional implications of these two principles of justice.

References to Chapter-1

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- ⁴ See in “Realizing Rawls” by Pogge, in the first chapter he discusses the metaphysical conception of justice. His interpretation of Aristotelian conception of justice is not convincing because in Aristotelian framework the conception of good is not derived just through abstract deductive reasoning. Rather virtue or the purpose is derived by Aristotle from the history of a community. It means that the conception of justice and its corresponding institutions are derived from the history of a particular community. This implies that it embodies the experiences of the generations and not just the abstraction of individual’s rationality.
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- ⁷ Ibid P. 161
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- ¹⁰ Rawls J. “Justice as rational choice behind the veil of ignorance” in Justice: Alternative political perspective by J.P. Sterba, California, words worth publishing company 1980 p. 127.
- ¹¹ Daniel Norman, Reading Rawls. A critical studies on Rawls theory of justice California. Stanford University press 1989 p. XIV
- ¹² Rawls J., A Theory of Justice, op. cit p. 135
- ¹³ Ibid p. 12
- ¹⁴ See Ibid p. 12 Rawls acknowledges that his conception of rationality is not profound enough.
- ¹⁵ Ibid p. 142
- ¹⁶ Ibid p. 142
- ¹⁷ Ibid p. 144
- ¹⁸ Ibid p. 145

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- ¹⁹ These principles will be discussed in our second chapter which focuses on the institutionalization of the principles of justice.
- ²⁰ Rawls J. *A Theory of Justice* op. cit p. 148
- ²¹ Ibid p. 149
- ²² Ibid p. 149
- ²³ Ibid p. 19
- ²⁴ Ibid p. 20
- ²⁵ Ibid p. 20
- ²⁶ Ibid p. 20
- ²⁷ Ibid p. 21
- ²⁸ Ibid p. 119
- ²⁹ See Rawls J. “A Theory of Justice” (P 119 to 121) in which he tries to identify his position regarding the issue of radical egoism.
- ³⁰ Ibid p. 119
- ³¹ Ibid p. 120
- ³² Ibid p. 121
- ³³ Ibid p. 121
- ³⁴ Ibid p. 121
- ³⁵ Ibid p. 302
- ³⁶ Ibid p. 302 – 303
- ³⁷ Ibid p. 302
- ³⁸ Mulhall and Adam Swift, *Liberals and Communitarians* op. cit p. 5
- ³⁹ Rawls John, *A theory of justice* op. cit p. 303
- ⁴⁰ Rawls J. “Distributive justice” in *Doing and being* (ed) by J.G. Haber New Jerry Prentice Hall inc 1993 p. 142
- ⁴¹ Ibid p. 143
- ⁴² Ibid p. 144
- ⁴³ It is important to note that Rawls would not consider such plane of life or conception of good as rational which is realizable without the instrumentalization of these primary social goods.
- ⁴⁴ See Rawls J. “Social unity and primary good” in *Beyond utilitarianism* (ed) by Sen and B. Williams op. cit p. 163.
- ⁴⁵ See Ibid p. 162
- ⁴⁶ See Rawls J. “A theory of Justice” p. 62, 92, 440 where he acknowledged the centrality and importance of self-respect as primary social good.
- ⁴⁷ Pogge 7. *Realizing Rawls* p. 162
- ⁴⁸ Rawls J. *A theory of justice*, op. cit p. 544.
- ⁴⁹ Rawls J. *social unity and primary good*, op. cit p. 164
- ⁵⁰ Rawls J. “The right and good contrasted” in *liberalism and its critique* by M. Sandel (ed) Oxford Besid Black well 1984 p. 38

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- ⁵¹ See Ibid p. 38
- ⁵² See Ibid p. 49
- ⁵³ Mulhall and A. Swift, *Liberals and communitarians* op. cit p.7
- ⁵⁴ Rawls J. "The right and the good contrasted" op. cit p. 40
- ⁵⁵ Rawls J. "Distributive Justice", op. cit p. 144
- ⁵⁶ Ibid p. 144
- ⁵⁷ See Ibid p. 144-146
- ⁵⁸ See Ibid p. 147
- ⁵⁹ Rawls J. *A Theory of Justice* p.152
- ⁶⁰ Ibid p.152
- ⁶¹ Ibid p. 154
- ⁶² Ibid p. 152
- ⁶³ Ibid p. 153
- ⁶⁴ See Rawls "the right and good contrasted" in which he has precisely acknowledges that the principle of deliberative rationality and principle of rational choice are the unconditional presumptions for the constitution of initial choice situation. Op. cit p.48
- ⁶⁵ Rawls J. *A Theory of Justice* op. cit 417
- ⁶⁶ See Ibid p. 146
- ⁶⁷ Ibid p. 146
- ⁶⁸ Ibid p. 146
- ⁶⁹ Rawls J. *The right and good contrasted* op. cit. p. 44
- ⁷⁰ Ibid p. 45
- ⁷¹ Ibid p. 93
- ⁷² Ibid p. 93
- ⁷³ It is a problematic side of his formulation because the criterion is shifted from rational choice to ethical intuitionism see *ibid* p. 94-97
- ⁷⁴ Ibid p. 94
- ⁷⁵ Ibid p. 94
- ⁷⁶ Ibid p. 433

CHAPTER - 2

The Institutional Dimension of the “Principles of Justice”

In the first chapter, we have discussed the theoretical basis of the “theory of justice”. In this chapter, we have focused on the institutional dimension of “justice as fairness”. This chapter is also of descriptive nature. We have concentrated on the primary sources and tried to excavate the actual Rawlsian stand regarding the institutionalization of the principles of justice. So that a coherent and systematic analysis of his framework becomes possible.

This chapter has been divided into two sections. In the first section, we provide a brief summary of Rawls’s “four stage sequence” regarding the institutionalization of the theory of justice in general and principles of justice in particular.

The second section is further divided into three sub-sections:

- i) The institutionalization of equal liberty.
- ii) The institutionalization of the distributive scheme.
- iii) Civil duty and its institutional implications.

Section - 1

1. Four Stage Sequence

Rawls derives his conception of justice from the abstraction of the contractarian theory. The principles of justice provide the legitimate basis of contract among equally free, rational and self-interested individuals. Rawls believes that principles of justice are not just theoretically valid but also institutionalizable. He identifies two major conditions for the establishment of a well-ordered society. According to him, in such social matrix, the idea of justice must be regulated by the public conception of justice. It should not transcend the will of the people. The socio-political and economic institutions must be compatible with the idea of justice as fairness or in other words must not resist the realization of the principles of justice.

The “principles” for “institutions” (social, political, economic etc) are differentiated by Rawls from the “principles” which apply to evaluate individual’s action in particular life situation. Rawlsian conception of institution is basically two-dimensional:

a) The formation of a systematically coherent and abstract body of rules and b) The institutional concretization or realization of those rules, in human (political and economic) conducts.

Rawls acknowledges that there is no organic relationship between just rules and just institutionalization. It means that if just rules are not correctly and adequately institutionalize they will not yield expected results. Therefore the compatibility between the rationale of the abstract rules and institution is necessary for the establishment of just socio-political order.

Thus by “the just institutionalization of just rules” Rawls simply means the institutional structure must be coherent with the spirit and rationale of the principles of justice. Therefore the validity of the just institution is determined by the just realization of the abstract system of rules. That’s why it is argued that the Rawlsian approach eventually collapses into consequentialism¹. In his institutional analysis of the theory of justice, Rawls presumes: Firstly, an institution is a publically acknowledged

system of rules. Secondly, the basis of association among individuals is contract rather than the ties of kinship or blood. Thirdly, every participant of the society knows about the system of rules however Rawls acknowledges that in actual situation people just know the fundamentals of the system of rules rather than the detailed account of the whole body of rules. Lastly, since the rules (or at least the fundamental assumptions of the rules) are generally accepted, therefore the system of rules is basically designed to realize the generally accepted ends.

According to Rawls, there are two kinds of rules namely the constitutive rules and the strategic rules. The constitutive rules are essentially fundamental in nature and provide the sphere of basic rights and duties. On the other hand the strategic rules contain a “body of maxim” which is derived from the constitutive rules. Such body of maxim is responsible for the coherent and systematic realization of abstract just rules. Rawls differentiates the constitutive side from strategic aspect of rules. The constitutive rules are considered as “ideal”. They provide a legitimate paradigm in which individuals pursue their interests. The free pursuit of their particular goods eventually enhances social welfare.

Rawls believes that a theory of justice has to answer three sorts of question:

- 1) What kind of legislation and socio-political policies are just?
- 2) What kind of constitutional framework is needed to reconcile the conflicting opinions of the agency of justice (citizens)?
- 3) What kind of procedural approach is appropriate for the realization of a just constitutional arrangement?

The institutional implementation of the principles of justice is completed in four steps. For Rawls, “each stage is to represent an appropriate point of view”² and presumed to be the institutional corollary of the previous stage. According to him, the four stages sequence is as follows:

- (1) Original Position
- (2) Constitutional convention

- (3) Legislation
- (4) Administration

The first stage is purely theoretical and abstract, however, the rest of the stages are more practical and need institutional framework for their realization. The first stage has comprehensively been discussed in the first chapter. The core concern of this chapter is to discuss and analyze the institutional side of Rawlsian theory of justice. Thus we will begin with the second stage. Rawls believes that the core concern of justice is not just the derivation of the fair principles of justice but also the simplified and coherent appreciation of the principles of justice through an institutional structure. According to him, the rationale of the principles of justice presumes such a framework in which citizens are able to judge the legitimacy of legislation and social policies. The individual opinions are mostly in conflict with each other due to their specific interests therefore the need to institutionalize such a constitutional arrangement which resolves the conflicting opinions of justice is tremendous. Rawls considers political process as a machine which structures the socio-political decisions according to will of the people. He acknowledges that there is more than one way of designing the mechanism of political process. It implies that “a complete conception of justice is not only able to assess laws and policies but it can also rank procedures for selecting which political opinion is to be enacted into law”³. Thirdly and most importantly the just political procedure must be able to determine the parameters of political duties and obligations. The institutionalization of the principles of justice is a highly complex phenomenon; therefore it has been divided into four different stages. It is important to note that this four stage sequence is not derived by Rawls through purely deductive methodology, rather “the idea of four stage sequence is suggested by the United States constitution and its history”⁴. It implies that constitutionalism is a political procedure which is not only compatible with the rationale of the original position in general and principles of justice in particular but it is also compatible with the history of a political community.

In the second stage, individuals are placed in a “**Constitutional Convention**” and their task is two-dimensional:

- i) To decide about the just political form.
- ii) To choose a concentuous constitution.

Deciding about the just political form individuals must ensure that the principles of justice already chosen are not violated in the “Constitutional distribution of power” (i.e. state power).

Rawlsian commitment with the impartiality of the parties in the original position remains consistent in constitutional convention as well. The fundamental difference between constitutional convention and original position is that “the appropriate conception of justice has been agreed upon”⁵ in original position. In constitutional convention, the delegates design the system of constitutional power of the state and fundamental rights and duties of the citizens.

It is important to note that the constitutional convention is not the sphere in which the choice of constitution will be made. In Rawlsian four stage sequence, the per-ambles of the constitution have already been chosen (i.e. the principles of justice) the parties in the constitutional convention formulate such a scheme which helps them successfully implement the two principle of justice. Thus the aim is to characterize a “just constitution and not to ascertain which sort of constitution would be adopted, or acquiesced in”⁶. The instrument of “veil of ignorance” (which sustains the impartiality and objectivity of the consensus) has also been used in second stage of sequence by Rawls. However, at this stage there is a partial elimination of the veil of ignorance. The individuals in the “Constitutional Convention” have

- a) the theoretical knowledge about their society which is relevant for the development of a meaningful, workable and concentuous constitution and
- b) The knowledge about the general facts or physical conditions like natural circumstance, resources, economic positions and political culture⁷.

The veil of ignorance blocks individuals’ knowledge about their particularity, social position, place in the distribution of natural attributes, the conception of good.

Constitution is basically a system of rules, rights and power of a government. It is basically the skeleton of the government which determines the direction of legislation and executive function of the state. The constitution is not just a document containing static sets of rules and body of rights but it also directs the process of social transformation.

Rawls tries to provide only that part of information which is relevant to derive just principles of justice thereby in original position very limited knowledge was available. Since the principles of justice (pre-ambls of constitution) have already been chosen (in original position), therefore the scope of knowledge is increased in constitutional convention. In this stage, Rawls realizes that the details of social, natural, economic conditions and also the cultural and aesthetic structures of society are needed to design an effective and workable constitution. Rawls believes that on the basis of the given theoretical knowledge and general facts about the given society the individuals will choose “the most effective just constitution”⁸. The two conditions of a just constitution, according to Rawls, are as follows:

- a) the constitution must satisfy the two principles of justice and
- b) It must also open the possibility of just legislation⁹.

Rawls believes that ideally the fairness of a constitution is calculated or judged by the efficiency of a procedural arrangement and the insurance of the just outcome of that procedural framework. By “procedure” he simply means the political process which is governed by the constitution. On the other hand by “outcome” he means “the body of enacted legislation”¹⁰.

One of the major concerns of social justice is the attainment of a “perfect” procedural form for the realization of a just social order. Rawls identifies two major obstacles in this regard namely the designing and the selection of the procedural form. He acknowledges that a constitutional regime is not the ultimate solution of the problem providing an error-free or perfect political framework. He claims that the “ideal or perfect

procedural justice cannot be realized”¹¹. According to Rawls, the just procedure is one in which equal freedom (freedom of conscience, thought, and political rights) for all (citizens) must constitutionally be guaranteed. Rawls believes that the “**Constitutional Democracy**” is such a political system that it has the potential to establish a just political process.

It is presumed that the individuals in the constitutional convention have the knowledge about the political tactics necessary for designing and selecting the fair political process (i.e. constitutional democracy, necessary for the realization of the fair principles of justice).

In Rawlsian framework, it is obvious that the two principles of justice set an independent standard for the desired legislation. This means that there are two conditions of just legislation. (a) The practical implementation of the principles of justice. (b) The legislative structure must be the rational unfolding of the abstract principles of justice.

The third stage in the sequence is the **legislation stage**. At this stage, mostly the laws and policies are not clearly identified as just or unjust. Moreover, the veil of ignorance has almost been lifted. The only information which has been blocked is the individual’s (legislator) knowledge about his own particulars.

Rawls believes that at this stage the proposed statutes must not violate the limits imposed in the constitution. The delegates in the constitutional convention design a political structure by presuming two principles of justice as per-ambles of constitution. Thus the legislation cannot violate the fundamentals of constitution. Constitution is basically a document describing the political system but it does not mean that the constitution and the political system are synonymous. Constitution deals with the issue of distribution of political power while political system deals with the question of the enactment of that text.

The gulf between the concentuous document (i.e. constitution) and its just enactment justifies the significance of conventions.

The political conventions counter the unseen rigidity of the constitution and harmonize it with the political history and cultural structure of society. This element of constitutional convention keeps a “political will” intact with the specific history of a political community. So it plays a double role, that is to say, on one hand it brings a flexible element in political system and on the other hand it circumscribes the “political will” in such a manner that constitution remains intact with its fundamentals but provides a leverage to accommodate changing political circumstances. It is impossible to construct a law, which is unequivocal rather there is always an open possibility of the interpretation and reinterpretation of Law. Thus judicial process is essentially a continual hermeneutical activity. In Rawlsian framework, the institutionalization of the principles of justice is dependent upon the unbiased judiciary. The constitution imposes different systems of check and balance to ensure the functioning of unbiased judicial system but it can never ensure absolute impartiality.

Therefore Rawls acknowledges that the application of the principles of justice is a hermeneutical activity. However the authenticity of the interpretation of constitution is dependant upon the “speculative political and economic doctrines and upon social theory generally”¹². Justice as fairness does not provide any specific economic theory and social philosophy; therefore the application of the principles of justice must take established economic doctrines, social theory into consideration before interpreting the constitution.

The institutional violation of the first principle is comparatively easy to assess according to Rawls. Any violation of the equal liberties can easily be demonstrable as unjust. However social and economic inequalities are to be interpreted in many different ways. The institutionalization of the “difference principle” and the assessment of its realization and violation is a very difficult task. Rawls divides different issues of socio-political justice into two spheres. They correspond roughly to two aspects of the basic structure of the social justice. The first principle provides the standard for the constitutional convention. This means that the

constitution formally ensures the equal liberties for all citizens and it also ensures that the overall political process must be compatible with the system of equal liberties granted in the constitution.

The second principle provides the criterion for the institutionalization of the legislative stage. It also provides guidelines for the legislation of socio-economic policies which maximize “the long term expectations of the least advantage section”¹³ with the conditions that

- a) The equal liberty for all must not be violated by any distributive scheme.
- b) The fair equality of opportunity must be established.

Another important contrast between the constitutional convention and legislative stage is that the constitutional convention enforces **equality** (i.e. formal equal freedom for all citizens). However the legislative stage acknowledges **inequalities** regarding the distribution of primary social goods among different social groups. Rawls believes that the economic inequalities are neither unnatural nor unjust. Rather they are helpful for the establishment of healthy social cooperation. He specifically claims that “the second part of the basic structure contains the distinctions and hierarchies of political, economic and social forms which are necessary for the efficient and mutually beneficial social cooperation”¹⁴. Finally, the constitutional convention is lexically prior to the legislative stage. This precedence institutionally ensures the lexical priority of the first principle over the second one.

The last stage is the “**administrative stage.**” This stage has two important dimensions:

- a) The application of legislative rules (i.e. law) on the particular concrete situations by the executive and judicial administration.
- b) This stage also monitors whether the citizens are following those rules in their daily life or not.

This is the stage in which the veil of ignorance has completely been lifted up and everyone has complete knowledge about himself and the facts of life. The adoption of the system of rules is therefore completed. There is no need to block the individual's knowledge for the realization of (objectively unbiased) fair principles of justice.

The presumed organic relationship between rationality and self interestedness does not guarantee a sustainable contractual order, as impartiality of mutually disinterested individuals cannot be ensured without the theoretical device of veil of ignorance. The Veil of ignorance plays a decisive role regarding the determination of relevant knowledge for the derivation of fair principles of justice.

The blockage of information in different stages of four stage sequence reveals that Rawls considers self-awareness (about one's particularity) as an obstacle to derive and institutionalize a just socio-political order. It also implies that the universality of self-interestedness (as a condition of rationality) is not decisive motivational instrument and in fact counter productive (to derive and institutionalize fair principles of justice) in absence of formal conditions of original position and veil of ignorance. The purpose of this four-stage sequence is to show how principles of justice will be applied. The sequence in fact unfolds the scheme of his procedural conception of justice, thus it is an essential part of his theory. It is important to note that it does not provide a comprehensive account and function of constitutionalism and democratic legislation. Rawls precisely said that, "this scheme is part of the theory of justice as fairness and not an account of how constitutional convention and legislatures actually proceed"¹⁵. The real aim of this four stage sequence is to identify the constraints (corresponding to each stage) which are adopted by Rawls to institutionally actualize his two principles of justice.

In our next section we will specifically analyze the institutionalization of his two principles of justice in the light of this sequence.

Section – II

2. Principles of Justice and their Corresponding Institutions

In Rawlsian framework, there is a delicate relationship between rules, Institutions and basic structure of a society. Rawls believes that it is possible for rules to be unjust while institutions are just. On the other hand, “institution may be unjust although the social system as a whole is not”¹⁶. The institutional side of Rawlsian conception of justice is basically three-dimensional:

- i) The institutionalization of equal liberty.
- ii) The institutionalization of the distributive scheme.
- iii) The problem of civil duty and its institutional ramifications.

Accordingly this section will firstly deal with the Rawlsian derivation of constitutional democracy from the institutionalization of the principle of equal liberty. The second part of this section deals with Rawlsian reconciliation of private property economy and constitutional democracy through the institutionalization of second principle in general and distributive principle in particular. Lastly we will discuss the Rawlsian idea of civil duty and its (socio-political) institutional limitations and ramifications.

2.1. Institutionalization of Liberty

In his analysis of liberty, Rawls is not concerned with the definition of liberty. It is more than obvious that he is much more interested in “the relative values of the several liberties and why they come into conflict” with each other¹⁷. So he sets aside the traditional distinction between positive and negative conceptions of freedom expounded by Berlin.

According to Rawls, any meaningful explanation of freedom must address three questions as follows:

- i) Who are the agents of freedom?
- ii) Freedom from what? I.e. what kind of restrictions or limitations is required to be eliminated?

- iii) What legitimate constraints are needed to enhance general freedom i.e. “what it is that they are free to do or not to do”¹⁸?

It is customary to define freedom in terms of obstacles and maximization of freedom is considered as synonymous to the elimination of the identified obstacles. The identification of obstacles (political, social, cultural, religious, emotional, aesthetical etc.) is a never-ending phenomenon; therefore, the absolute realization of freedom is not possible. For Rawls, these questions¹⁹ are organically linked with each other as well as they pose a challenge for contemporary political philosophy to resolve. “This or that Person (or persons) is free (or not free) from this or that constraint (or set of constraints) to do (or not to do) so and so”²⁰.

Rawls focuses on the constitutional and legal restrictions, which refrain individual's freedom. He acknowledges that there is no one sense of liberty because there are different agents of freedom, for instance i) person ii) associations or organization or cooperation and iii) state. Therefore liberty is in fact the name of “certain system of public rules defining rights and duties.”²¹ This means that freedom is just a space whose frontiers are determined by the system of rights. According to Rawls, in political sense the meaning of freedom is determined by the publicly acknowledged institutions, because the prioritized system of rights cannot be protected without having proper institutional structure.

There are different spheres of liberties due to which there is always an open possibility of clash among different spheres of liberties. The role of institutions (political, legal, and economic) is to protect one agent (person, association, state) from the interference of the other. It is the institutional framework, which imposes legal obligations over the agent, not to interfere in others political, religious, moral etc. affairs²². Since there are different spheres of liberties, therefore basic liberties should be assessed in a single system rather than particular liberties on their own. The task of the delegate (in a constitutional

convention) and legislator is to balance one sphere of liberty against that of the other for the attainment of “best total system of equal liberties”²³.

In the Rawlsian framework, the conception of freedom is not anarchic. He acknowledges certain restrictions and limitations as legitimate and necessary for the sustenance of the system of liberty. The limitation of freedom is not unjust because “these limits are subject to certain criteria expressed by the meaning of equal liberty and (the) serial order of the two principles of justice.”²⁴

He acknowledges that the framework of constitutional democracy is not a perfect political system but in such a system two conditions must necessarily be satisfied namely i) the principle of equal liberty and ii) the possibly “just and effective system of legislation”²⁵.

In Rawlsian framework, the principle of equal liberty is concretized (in constitutional procedure) in the form of “principle of equal participation”. The initial reference of constitutional democracy is equal political participation. The worth of a democratic decision is determined by the fact that to what extent the principle of equal participation is realized. Before discussing the relation between liberty and political participation, Rawls mentions the general features of constitutional statecraft as follows:

- i) Socio-political and economic policies are decided by elected representatives for a limited period.
- ii) These representatives are accountable to the electorate.
- iii) The representatives have advisory capacity for effective legislation according to the legitimate public sentiments.
- iv) The executive body (i.e. judiciary) is responsible for monitoring legislative procedure according to the constitution or the spirit of constitution.
- v) Political parties are not just interest groups rather they must have some political agenda and public conception of the good.

- vi) The constitution determines the parameters of the legislative body; however, “a firm majority of the electorate is able to achieve its aims by constitutional amendment”²⁶.
- vii) All sane adults have the right to vote (one man one vote).
- viii) Fair, free and regular elections are also important for the sustenance of constitutional regime.
- ix) The need of a loyal opposition to counter one party dictatorship, to open up healthy bargain and clash of opinion for the realization of the principles of justice, for the promotion of public good, and to critically evaluate and analyze the prevailing socio-economic and political policies of the government²⁷.

In the Rawlsian framework, the principle of equal liberty is institutionally concretized (constitutional procedure) in the form of the principle of equal political participation. Therefore the initial reference of constitutional democracy is the realization of the principle of equal political participation.

Rawls believes that there is always an open possibility of the clash of certain sphere of liberties therefore, there is a need of a “firm constitutional protection for certain liberties particularly freedom of speech and assembly and to form political association.”²⁸ The institutionalization of the principle of equal liberty in the form of equal participation requires three-dimensional analysis namely the meaning of equal participation, the extent of this participation and its limitation and the measures which are necessary to be taken for the enhancement of its (i.e. equal participation) worth. In this regard, the equal participation is characterized by a) one man one vote, b) if the electorate is divided into single member territorial constituencies, the constituencies must have about the same number of electors (TJ, page 223) and c) every citizen has equal access to public offices. It means that everyone is free to i) join political parties, ii) run elective positions and iii) hold places of authorities.²⁹ However reasonable constraints of “age limit” and condition of permanent residence must be imposed.

As for the question of the extent of participation is concerned, Rawls is not very clear though he believes that the problem of the extent of political liberty (equal participation) is raised if:

- a) The constitution establishes majoritarian dictatorship.
- b) The ability of majority (of electorate) to achieve its objectives through constitutional amendments.

In order to cope with these problems there is a need to limit the scope and authority of the majority through constitutional checks and balances, separation of state power, judicial review of the bill of rights etc. But the problem is that these constraints eventually “limit the scope of the principle of participation”³⁰. Interestingly Rawls believes that these constraints are consistent with the principle of equal participation, because “similar restrictions apply to everyone and the constraints introduced are likely over time to fall evenly upon all sectors of society”³¹. Lastly there is always a need of institutional backing to promote the sanctity of the principle of equal liberty through the systematic, coherent, and consistent realization of the principle of participation.

Rawls precisely identifies that the major cause of the failure of constitutional government is the lack of systematic institutionalization of the principle of participation. He believes that the root cause of all defects is the “failure to insure the fair value of political liberty”³².

It is a historical fact that ironically the disparities in the distribution of material welfare were tolerated by the legal system of the constitutional governments. The reason of this was that economic inequalities were mistakenly considered as compatible with political equality. The natural corollary of this is that no measures have been taken to develop such institutions (distributive), which are necessary for the sustenance of the formally given political equality. However Rawls believes that the political injustice is much more disastrous than that of market imperfections. Concentration of political power is much more dangerous than that of capital concentration. It is another

question that in today's world capital and power (political) have become synonymous. Rawls acknowledges that "parties and elections are financed not by the public funds but by private contributions, the political forum is so constrained by the wishes of the dominant interest."³³ This simply means that the dominant finance group directly or indirectly effects the political process in general and individual's liberty in particular which is constitutionally guaranteed and institutionally protected. It implies that between the lines Rawls acknowledges market domination as an unintended consequence of the constitutional democracy, which needs to be countered. Rawls believes that since these problems are in fact the problems of political sociology, therefore they are not directly addressed in his theory of justice. In other words theory of justice must not be taken as "a theory of political system."³⁴

Rawls believes that the existence of a loyal opposition is necessary for just political process, because it helps to derive a conception of the good (according to the will of the people), and at the same time without negating the only legitimate public good i.e. "individual freedom" (freedom of conscious, freedom of thought, assembly, expression and property) keeps on interpreting or reframing the meaning of public good. There is no single and ultimate policy or methodology to maximize individual liberty, therefore the purpose of opposition is to critically analyze the socio-political policies and constantly identifying the obstacles which obstruct individual's freedom.

The role of representatives in the political institutionalization of the theory of justice is decisive. The representatives are not the vehicles of the blind will of the majority or just the agent of their own constituencies. The legislators according to Rawls, "represent their constituents in the substantive sense"³⁵. By substantive representation he means just and effective legislation. The credibility of the representative is judged on the basis of his loyalty with the principles of justice. Moreover, the priority of equal liberty for all, without systematic and coherent institutionalization of the principle of political participation is meaningless. Rawls believes that constitutional democracy is a

political procedure which has the capacity to not just ensure equal freedom but also its proper institutionalization. In such political procedure principle of equal liberty is only realized, when the principle of equal participation is satisfied. The principle of participation is applicable to institutions not the individuals therefore it should not be taken, according to Rawls, as a condition of citizenship to take an active role in political affairs. It means that the state craft can not force their citizens to take active part in political affairs, however no state institution can refrain their citizens to take part in political affair. Rawls introduces certain moral and ethical argument regarding the importance of political life and one's participation in that aspect of life, but there is no legal compulsion legitimate in this regard. In more specific sense, the citizens are free to participate in the consolidation of the system, but they are not free to destabilize the system.

2.2. Institutionalization of the Distributive Scheme

The distributive side of the theory of justice comes under the heading of second principle. Rawls provides the scheme of the institutional arrangement (regarding the distribution of material welfare) necessary for the constitution of a modern liberal statecraft. The principles of justice in general and second principle in particular provide the basis of “a doctrine of political economy”³⁶. Rawls consciously avoids the term “welfare” because of its linguistic identification with utilitarianism. He rather prefers to use the phrase “social choice” to identify the object of distribution. He believes that any doctrine of political economy presumes a particular conception of the “public good” which serves as an evaluative criterion to judge the socio-economic policies. The legalization of socio-economic phenomena, according to Rawls, directly affects the basic structure of the society, social system, structures of desires, aspirations and preference of its citizens. On the other hand, economic structure provides the institutional framework to satisfy their desires, wants and needs. The economic structure not only satisfies the existing needs and wants of its citizens but it also provides a “way of creating and fashioning wants in the future.”³⁷ The choice of these socio-economic arrangements is

determined by the conception of “human good” and the “institutions”, which are designed to realize those ends. Rawls acknowledges that the social cooperation without any conception of “human good” is not possible. He claims that justice as fairness provides a framework in which any interpretation of human good (i.e. political, moral, aesthetical, and economic) is realizable which is not in conflict with the prioritized principles of justice in general and ‘will to freedom’ in particular.

The issue of “public good” is central as far as the issue of distribution is concerned; therefore Rawls tries to justify the authenticity of “contract theory” in the derivation of a public conception of the good. He specifically claims that the superiority of contract doctrine as an alternative to ethical intuitionism and moral perfectionism. Traditionally, it was believed that there is no “Archimedean position” other than ethical intuitionism & moral perfectionism to judge the “real aim” or “public good”.

Rawls claims that his conception of original position and derivation of the principles of justice is a unique alternative to judge the most abstract and highly general human social good that “men are presumed to want what ever else they want”³⁸. He acknowledges that the list of these identified “primary social goods is may be based on psychological premises and these may prove incorrect”³⁹ but he emphasizes that the identified goods are necessary to pursue any rational plan of life. He believes that theory of justice does presume a theory of good, but the theoretical as well as institutional nomenclature of the theory of justice are so, flexible⁴⁰ that the conception of the good does not affect the pursuit or “choices” of individuals to plan their life according to their own will. In short it is a purely secular framework in which any conception of good is realizable⁴¹ except one which contradicts the public good i.e. equal freedom.

According to Rawls, the “contract doctrine” presumed by theory of justice offers certain constraints on the conception of good, which serves two purposes simultaneously:

- a) It establishes the priority of “justice” over “efficiency” because people are naturally unequal in their efficiencies but even then they are all equally human and have equal right to be treated justly.
- b) It also ensures the priority of individual freedom over social and economic advantages, because the precedence of liberty over all other conceptions of good is necessary to sustain the secular framework.

Any desire or plan of life, which violates the ultimate priority of justice, would be considered as illegitimate. The Rawlsian condition regarding the legitimacy of the desires or plans of life is presumed to be an “institutional criterion” to judge the legitimacy of desires and also discourage those desires which are in conflict with the principles of justice. Therefore, there is a need to construct an institutional framework which performs two functions:

- i) Promote the virtues of justice as fairness
- ii) Discourage those desires or plans of life, which are in conflict with the virtues of justice as fairness.

In this way Rawls implicates a criterion of how a citizen should be. That is to say that through the principle of justice he provides “a partial ideal of the person which social and economic arrangement must respect”⁴². Moreover, through the institutionalization of the principles of justice, Rawls establishes an Archimedean position to assess the long-term interests of society “irrespective of the particular desires and needs of its present members”⁴³. The nature of the principles of justice is such that it presumes certain institutional structures. These Institutions offer certain constraints on individual’s desire or plans of life, which are incompatible with justice as fairness. So there is a resemblance between perfectionism and justice as fairness, as both offer certain constraints on immediate pursuit of the existing desires, which are incompatible with the ideal of the person presumed by these theories.

Rawls acknowledges that utilitarianism also provides a ground for choosing among different ideals of the person i.e. “greatest

happiness for greatest numbers” but the problem lies in the institutional application of the principle of utility. In utilitarian perspective, “initial conditions (i.e. existing desires and present circumstances) may heavily influence the conception of human good that should be encouraged”⁴⁴. So utilitarianism collapses into vulgar consequentialism. However Rawls believes that the ideal of person or the fundamental criterion of social structure is purely a-consequential in justice as fairness and perfectionism

Justice as fairness is embrionically an individualistic approach but at the same time it is not purely subjective regarding the issue of human good at the public level. Rawlsian principles of justice provide objective institutional standards to differentiate between legitimate and illegitimate desires, wants and aspirations. The contractarian basis of justice as fairness provides an alternative to perfectionist or a priori principles regarding the attainment of the vantage position to judge the mechanism of fair social order.

Rawls believes that in a contractually structural society the general desire of primary social goods provides the basis of agreement among self-interestedly-motivated individuals. The framework of the original position sustains:

- i) Neutrality and the fairness of agreement.
- ii) The objectivity of the general desires of primary social goods.
- iii) The list of the primary social goods.
- iv) Unanimity of the agreement (among equally free rational and self-interested individuals), because Rawls believes that, “the deliberation of any one person is typical of all”⁴⁵.
- v) Equal sense of justice.

According to Rawls, the idea of unanimity presumed in the theory of justice must not be confused with the political philosophy of idealism. The basis of general consensus is contractarian in nature therefore “there is nothing characteristically idealistic about the supposition of

unanimity”⁴⁶. The derivation of consensus is the by product of a bargaining process among self-interested individuals. Thus, the idea of homogeneity has also been derived by Rawls from the idea of unanimity. According to him, the idea of unanimity has been interpreted differently in traditional moral philosophy, which provides the basis and legitimacy of the structural formation of political order. With reference to his idea of unanimity justice as fairness prioritizes a-social individualism but the importance of community (by community he simply means contractually structured collectivity) is not being ignored and has properly been accommodated by Rawls in his idea of unanimity. The role of community in the derivation of human good is central. It also provides the initial basis of contractual association among self interestedly motivated individuals. The distributive scheme of Rawlsian procedural conception of justice presumes a particular conception of public order which characterizes the features, values, convictions and moral intuitions of a society. If we take a glance of the background institutions of his distributive mechanism we can realize that he tries to institutionally ensure all those aspects of social constitution which are necessary to sustain liberal public order.

2.3. The Background Institutions for Distributive Justice

It seems that for Rawls the basic structure of a society is an organic whole. The major socio-political institutions are the binding agency, which sustains that structure. On the other hand, the principles of justice provide an evaluative criterion of social justice. The central problem of distributive justice, according to Rawls, “is the choice of a social system”⁴⁷ compatible with the principles of justice.

Rawls believes that social and economic process should properly be channeled by the political and legal institutions. This, on the one hand, implies that Rawls prioritizes politics over economics⁴⁸ and on the other hand, social justice in general and distributive justice in particular both are impossible in the absence of fair, efficient and neutral legal institutional structure compatible with the principles of justice.⁴⁹

Rawls has divided the background institutions of government into four different branches:

- I. The allocation branch
- II. The stabilization branch
- III. The transfer branch
- IV. The distributive branch

According to him, each branch has its own domain of activities and consists of various supporting agencies according to the demand of specific socio-economic conditions. The allocation branch is responsible to keep price system competitive and sustains its workability against unhealthy market tactics. The allocation branch controls market function, for instance maintains competitive system of price. The allocation branch is also responsible to identify or to correct different sections of economy, which are needed to be subsidized or taxed. Furthermore, it is also responsible to define or (in most cases) redefine property right, (if necessary) for the realization of the principles of justice.

The stabilization branch resolves the problems, which emerge due to the economic process, for instance problem of unemployment, inflation, free choice of occupation and also money supply and sustains effective mechanism of demand /supply. The major function of this branch is to stabilize the economic system. The assessment and evaluation of needs (or an appropriate standard of life) is addressed and compensated by transfer branch. According to him, the “transfer branch guaranteed a certain level of well-being and honors the claims of need”⁵⁰.

The basic function of these branches is to associate different precepts with specific institutions. The different precepts are judged and balanced on the basis of their compatibility with the principles of justice. The role of transfer is very crucial because it provides the minimum standard of well-being. Therefore, Rawls believes that after maintaining the minimum standard of well-being of the citizens it would be “perfectly fair that the rest of the total income be settled by the price system” by presuming

that the major cause of monopolistic exploitation and “unreasonable externalities have been eliminated”⁵¹.

Lastly, Rawls mentions the function of the fourth branch, i.e. distributive branch. Rawls believes that preservation of the approximate justice in distributive share is the core concern of the distributive branch. In concrete sense the regulation of the system of taxation along with the reasonable adjustment in property right (subject to the constraint that the adjustment does not violate the principles of justice) is the major function of this branch.

Rawls divides the distributive branch into two parts, both of which correspond to each principle of justice respectively. One aspect of this branch limits the concentration of capital / power, and at the same time controls the factors, which do effect the realization of “fair political liberty and fair equality of opportunity”⁵². The other aspect of this branch is responsible to generate capital (revenues) necessary for the governmental expenditures regarding the distribution of public good. Rawls precisely claims that each dimension of distributive branch corresponds to the two principles of justice. The institutionalization of taxation, redefinition of property right etc. are the institutional strategies to protect the legitimacy of those political institutions which ensure fair equality of liberty (i.e. first principle). On the other hand, the collected revenue from taxation finances the public good which at the same time subsidizes the least advantaged section of the society as well as ensures the fair equality of opportunity. Thus, the second principle is institutionally realized.

The problem of distribution could be tackled either by the regulation of income structure i.e. by setting out the standards of minimum wages or by the satisfaction of the claims of basic needs, that is, the satisfaction of the minimum standards of well-being. Rawls considers the later approach towards the establishment of social justice as much more effective then that of the former. There are two major reasons behind this as follows:

- a) The standardization of the “claims of need”, i.e., the minimum standard of well-being is not the realm of market. There must be a need of extra-market or supra-market arrangement, i.e., of state which determines the criterion of “social minimum”. This legitimizes the priority of politics over economics⁵³.
- b) In Rawlsian distributive scheme, the division of the different branches is basically the division of different tasks. The nature of the tasks assigned to each branch is at the same time claimed to be:
 - i) Compatible and reinforces the task of the other branches.
 - ii) Consistent with the spirit of the justice as fairness in general and principle of justice in particular.

The above mentioned background institutions of government reveal a paradoxical relation between state and market. The state / market relationship (derives from Rawlsian distributive scheme) provides the basis of economic theory and political economy. But in theory of justice Rawls is not directly concerned with the explanation or analysis of economic theory. He focuses on the problems of political economy only pertaining to the question of social justice.

2.4. Distributive justice and state/market relationship

Rawls claims that the purpose of discussions about economic theory is to substantiate the implications and scope of his principles of justice.⁵⁴ He wants to analyze the practicality of difference principle in the context of contemporary ideas of political economy. He analyzes the issues of political economy from the perspective of a “citizen who is trying to organize his judgment concerning the justice of economic institutions.”⁵⁵ Generally, an economic system is defined by six core factors namely (1) Production, (2) Means of production, (3) Consumption and the nature of consumer, (4) Labour contribution, (5) Role of saving and investment of social resources and (6) Provision of public goods.⁵⁶

According to Rawls, ideally all these factors “should be arranged in ways that satisfy the two principles of justice.”⁵⁷ The core concern of distributive justice is the equitable distribution of public goods. The size of the public sector is very crucial in the institutionalization of the distributive justice. Rawls acknowledges that the size of the public sector in capitalist economy, or in Rawlsian term “private property economy,” is very small as compared to that of socialist economy (in which all means of productions are owned by the state). However, in private property economy state acts as an entrepreneur along with other private enterprises. It is because of this reason “the number of publicly owned firms is presumably small and in any event limited to special cases such as public utilities and transportation”⁵⁸. It would be better to discuss the essential qualities of a public good before discussing the institutions, which make the equitable distribution of public good possible.

There are two essential qualities of a public good namely (1) indivisibility and (2) Publicness. By “indivisibility” Rawls means that the good is equally enjoyed by all citizens and cannot be divided privately and purchased according to one’s preferences. However, he acknowledges that the degree of indivisibility varies, due to which the public goods are of various kinds “depending upon their degree of indivisibility and the size of the relevant public.”⁵⁹ On the other hand provision of the public good is the realm of the state and not that of the market. Rawls believes that, “public goods must be arranged for through the political process and not through the market.”⁶⁰ The derivation and systematic institutionalization of the distribution of public goods are the major concerns of justice as fairness otherwise the system of social cooperation will collapse. As a result, mutually disinterested individuals lose their commitment with system which is conditional to the possibility of the realization of their self interests. Rawls identifies two major problems, which are associated with the idea of public good.

- a) The problem of collective actions.
- b) The problem of assurance of collective agreements.

The above problems are organically linked with each other and secondly both problems are resolved by a single agency i.e. state.

The production, protection and promotion of public goods are financed by the revenue collected from the general public. The problem is that the contribution of particular individuals in the overall collection (revenue) is negligibly trivial. This triviality of the individual's contribution (in the promotion /production of public good) ignites a "temptation for each person to try to avoid doing his share."⁶¹ When people realize that other members of the society are not equally contributing in the production of public good then they start losing their confidence in the system. The lack of assurance (regarding the equal contribution of the other members) makes people skeptical about the fairness of the institutional structure of society. The public willingness regarding the payment of their fair share is necessarily conditioned with the institutional assurance of collective agreement. This implies that the collective agreement and its institutional assurance are the core issues of distributive justice according to Rawls.

In order to resolve both problems Rawls depends on the "state" as a legitimate agency to provide a legal / institutional framework which on the one hand forces individuals to contribute their fair share and, on the other hand, provides institutional assurances regarding the enforcement of binding rules. The enforcement of binding rules through statecraft eventually negates individual freedom but generally the coercion is presumed to be perfectly rational (in the Rawlsian sense) and legitimate because "the public good is everyone's advantage and one that all would agree to arrange for."⁶²

Like all others liberals Rawls also appreciates the realization of the principle of efficiency and liberty through market mechanism. But at the same time the egalitarian temperament of Rawls urges to counter the anti-egalitarian consequences caused by the market, i.e., income disparities or inequalities, capital concentration which threatens the positive aspects of market. The conception of state derived from Rawls theory of justice is

essentially interventionist state, which counters the monopoly of market and avoids mafia capitalism. He thinks that interventionist role of state is necessary for the realization of the principles of efficiency and freedom through market mechanism. Rawls acknowledges that market essentially increases the initial advantages of those who already belong to advantaged group. This increase in initial advantages undermines the significance of efficiency and individuals' freedom. The income disparities and meaninglessness of the opportunity principle eventually disenchant the least advantaged group and encourage them to challenge the liberal socio-political system. Rawls' conception of state protects the class based society or market society by restraining the market exploitation and monopoly through state intervention.

Rawls differentiates between the ideal theory of justice from non-ideal theory of justice. He believes that the ideal theory provides a criterion to identify the nearest possible actualization of theory under given circumstances. Rawls opines that the two principles of justice are the pre-ambls (i.e. ideal) of a constitution for the state but the constitution must be formulated according to the "natural circumstances and resources, its level of economic advance and political culture and so on."⁶³ It implies that principles are ideal but their institutionalization must be compatible with existing conditions, for instance, in the light of ground realities and given circumstance the equal liberties may be restricted for the maximization of greater equal liberty. Similarly, the difference principle undermines first principle for the maximization of greater equal liberties in future.

The justification of state intervention provided by Rawls is that the state is the only legitimate agency which assures the just distributive mechanism. He believes that "the indivisibility and the publicness of certain essential goods, and the externalities and temptation to which they give rise, necessitate collective agreements organized and enforced by the state."⁶⁴ There is no agency other than state which can provide assurance that the other citizens are doing their part. There are different arguments regarding the organic relation between the legitimacy of state

intervention and assurance problem of the state. Most of the people argue that why not the assurance problem “was handled within the framework of customary practice and personal allegiance.”⁶⁵ The political framework which Rawls is to deal with presumes constitutional democracy and private property economy. The society emerges from such institutional setup is a civil society in which traditional allegiance and collectivities (religion, tribal and kinship eventually disintegrate). The social atomization presumes self interestedly motivated and marketized relationship among citizens as the basis of social order. The individuals make their existence meaningful in various market roles. Therefore they have to rely on a coercive power of state as a lender of the last resort. Rawls believes that market can not provide such assurance because it lacks coercive administrative structure or executive power.

Rawls takes a clear anti-monopolistic stance and considers monopoly as a social evil. It is obvious that monopoly is the unintended consequence of market mechanism which is needed to be counter through active state intervention (i.e. equitable income distribution, allocation of resources, subsidization and taxation etc.). Rawls believes that the monopolies result concentration of capital and primary social goods. So there is a need of coercive state structure to incorporate those who are left behind due to their inefficiency.

Rawls acknowledges that a competitive market is desirable because of actualization of individual's freedom and efficiency but he claims that market institutions are needed to be harmonized with the socio-political institutions through state intervention. It implies that he does not consider market mechanism as self-sufficient. His dependence on state as a re-distributive agency is of pragmatic nature because he believes that “competitive market is not sufficient for the job of stabilization.”⁶⁶ Justice as fairness provides a conception of state which complements market mechanism. The state performs two functions simultaneously: firstly, it counteracts the monopoly of market forces through price control mechanism, system of taxation and subsidization and investment (as an independent

entrepreneur). Secondly it reduces the tendencies which are inherently linked with competitive market mechanism (i.e. concentration of capital, income disparities, Inequalities etc.) through the redistribution of primary social goods. It implies that in principle Rawls is not against competitive market but he considers state as supportive agency of market. For instance the market cannot insure that competition begins from equal positions, similarly, in case of market failures the market can not sustain it-self autonomously; it necessarily looks towards state as a last resort. Rawls believes that principles of justice in general and difference principle in particular preserve the market mechanism and through a redistributive function it keeps the work force intact with the system.

Rawls opines that without active state intervention the market mechanism does not remain competitive. It implies that justice as fairness presumes a market society and tries to make it competitive through active state intervention. Thus unlike libertarian the competitive market mechanism can not be governed and stabilized by invisible hand rather active state intervention is necessary to ensure competitive and stable market. The interesting aspect of this relationship between market and state is that Rawls provides rationale for class based society. He thinks that classlessness is not the necessary condition of the fairness of just social order. It may be argued that what is the justification of this coercive state intervention if the citizens already have a sense of justice? And they are the participants of a well-ordered society. The answer is simple; Rawls's sense of justice does not prevent people from invading one another through exploitation.”⁶⁷

3. The problem of civil duty and its implications

We have taken a brief survey of the corresponding institutions of the two principles of justice. Rawls differentiates principles for institution from principles for individuals.

Rawls believes that the principles of institutions are different from principles for individuals. He claims that justice as fairness not only derive fair principles which apply to institution but also

identify principles for individuals. According to him, a complete theory of right not only derives principles for institution but “includes principles for individuals as well.”⁶⁸ Rawls does not discuss the principles for individuals comprehensively but he acknowledges that “principles of this type are an essential part of any theory of justice.”⁶⁹

Three sorts of principles are to be chosen:

- (1) The principles for the basic structure of society
- (2) The principles for the individuals
- (3) The principles for the law of nations

He discusses the first two principles and emphasizes that the lexical order of the choices of these principles must be followed. In order to defend his sequence he insists that in this way identification of moral obligation and duties are much easier and can be short listed after the settlement of the basic structure of society. In this regard, he agrees with Bradley’s argument that “a person’s obligations and duties presuppose a moral conception of institutions and therefore that the content of just institutions must be defined before the requirements for individual can be set out.”⁷⁰ Rawls believes that the agreement on the principles for institutions is not enough and there “must be an agreement on principles for notions such as fairness and fidelity, mutual respect and beneficence as these apply to individuals as well as principles for the conduct of the states.”⁷¹ The principles which apply to the individuals are considered as “principles of fairness.”⁷² The principles of fairness hold that an individual has to do his part accordingly, if two conditions are met. Firstly, the institution and the practices are just i.e. they satisfy the two principles of justice. Secondly, one has accepted voluntarily the benefits of the institutional structure.

It means that if a citizen takes advantage of the opportunities and benefits from the institutional arrangement then it is his obligation to act voluntarily for the sustenance, protection and stability of the just socio-political arrangement. Thus, the principle of fairness has two parts: “the first (part) states that

institutions or parties are in question must be just, the second (part) characterizes the requisite voluntary act.”⁷³

Rawls also identifies certain natural duties, for instance “the duty to help another....; duty not to harm or injure another; and the duty not to inflict unnecessary suffering.”⁷⁴ The duty of mutual aid is basically positive, i.e., it tells you, what one ought to do. The rest of the two are negative in the sense that, they tell you what one ought not to do. Rawls believes that “negative duties have more weight than positive ones”⁷⁵, because the violation of negative duties is much more disastrous regarding the realization of fair and just scheme of social cooperation. Rawls identifies some important features of these natural duties, for instance, the natural duties do not hold between institutional relationships rather they hold between individuals. Moreover, the natural duties morally compel each and every citizen of a well-ordered society to consider every other citizen as equally moral, respectable and worthy.⁷⁶

The natural duty which is most fundamental to complement justice as fairness is the duty of justice. The duty of justice encourages us “to support and to comply with just institutions that exist and apply to us.”⁷⁷ It is important to note that the principles for institutions are prior to the principles for individuals. Therefore any realization (based on subjective or incorrect interpretation) of the principles for individuals which is in conflict with the actualization of the principles for institution would be illegitimate.

Rawlsian conception of “right” is derived from the principles of natural duty and obligation. In order to understand the whole body of right / duties and their institutional implication it necessary to understand these ideas which are organically linked with his concept of justice. The most important natural duty identified by Rawls is “to support and to further just institutions.”⁷⁸

According to Rawls, in the context of the theory of justice, this natural duty has two dimensions:

- 1) The individuals (citizens) must comply with just institutions and also do their share when they (just institution) exist or function.
- 2) Every citizen should take part in the establishment of just arrangement and also be ready to sacrifice, for the stability of the just institutions at the cost of his (immediate) interests.

These two dimensions basically reflect two different sorts of prescriptions. The first one tells us what the citizen ought to do, i.e. “to uphold justice, mutual aid, and mutual respect.”⁷⁹ The second one prescribes what the citizen ought not to do, not to instrumentalize other, “not to injure not to harm the innocent.”⁸⁰

In a well ordered society, individual’s involuntary acts are governed, ordered and structured through principles for institutions. But the voluntarily acts ought to be governed by the principles for individuals. It implies that the individuals may prefer principle of utility rather than principle of fairness as a governing principle for their voluntary acts. For instance, if a legislator presumes utility principle as a governing principle then, according to Rawls, this incorporation of the principle of utility to guide individual’s decision or conducts eventually leads to contrary directive and does not ensure individual’s commitment with just institutions at the cost of his immediate interests. As a result the spirit of the fair principles is unrealizable. It is very crucial to understand that Rawls emphasizes the need to harmonize the principles for institutions with principles for individuals. If the principles for individuals (i.e. utility maximization) is not compatible with the principle for institutions (i.e. two principles of justice) then the actualization of justice as fairness cannot be guaranteed.

The principles which define the duties of individuals must be simple, clear and supportive to just arrangements. Rawls prefers the principle of “agreement” or “consensus” rather than principle of utility to guide individuals and the realization of their natural duties. However the principle of obligation just plays a complementary role in this regard. The natural duties identified

by Rawls are presumed to be reasonable but they cannot be legally enforced. The adoption of the duties is a matter of choice which cannot be institutionally imposed upon individual. However, Rawls claims that actualization of natural duties (independent of any legal or institutional compulsion) enhances individual confidence on his own self, system of values and sense of worth etc. At times our sense of duty compels us to sacrifice our own interest for that of others. This voluntary help to others makes little difference to our self but it is very significant for the other. Rawls claims that the value of help is not determined by the qualification of the “help” rather “by the sense of confidence and trust in other men’s good intention and the knowledge that they are there if we need them.”⁸¹

Rawls provides a pragmatic argument regarding the desirability to act according to the demand of natural duty. If people become indifferent regarding the realization of their natural duties then “it would express indifference if not disdain for human beings that would make a sense of our own worth impossible.”⁸²

Rawls believes that the principles for institutions and priority rules are finite. On the other hand, the moral principles (virtues of institutions) are infinite. Therefore, the violation of moral principle cannot be tackled institutionally. So “the significance of the moral reasons that are not accounted for becomes negligible as the conception of right is more fully worked out.”⁸³ This problem is of a practical nature because in a well-ordered society everything cannot be legalized. There must be a sphere of life which is independent of institutional intervention. Therefore Rawls believes that “the priority rules are sufficient to resolve conflicts of principles as at least to guide the way to correct assignment of weights.”⁸⁴ The finite conception of “right” provides a framework which is claimed to be enough to guide one’s moral actions in a given situation. As far as the problem of obligation is concerned, Rawls believes that all sorts of obligations are dependent on the principles of fairness.

The voluntary support of the institutional structure provides the basis of legitimate obligation. Moreover, all sorts of obligations

are dependent on the “principle of fairness.” Rawls claims that principle of fairness has two dimensions the first part deals with the question of How? i.e. “How we acquire obligations?”⁸⁵ The second question deals with the conditionality of the obligations i.e. “the condition (is) that the institution in question be just, if not perfectly just, at least as just as it is reasonable to expect under the circumstances.”⁸⁶ This implies that obligations must not be superficial or subjective rather they should be institutionally backed as well as there must be some objective conditions of their satisfaction.

In the light of the above theoretical discussion, further we will focus on the specific institutional problems which are closely related to the problem of civil duty. Rawls accepts the possibility of unjust laws in a just constitution. However he thinks that injustice of law is not the sufficient basis of legal violation. If the basic structure of the society is just then we have “to recognize unjust laws as binding provided that they do not exceed certain limits of injustice.”⁸⁷ In the original position it is presumed that the principles of justice “will be strictly complied with and followed by everyone.”⁸⁸ Therefore the tolerance of partial structural injustice is a crucial and questionable issue of the procedural conception of justice.

In the political scenario, the problem of “civil disobedience” and “concentuous refusal” are the core issues of political theory in general and Rawlsian political liberalism in particular. According to Rawls, there is a need to discuss the issues of “political duty” and ‘obligations’ before discussing the problems and the legitimacy of civil disobedience and concentuous refusal. In some cases, non-compliance is justified, for instance, in case of the violation of fundamental rights. Similarly unjust laws can also be violated but there are certain conditions of such intolerant expression. He believes that “non-compliance is justified to the extent to which laws and institutions are justified.”⁸⁹ According to him, there are two major reasons for non-compliance: firstly, the existing socio-political, legal arrangement and publicly accepted standards of justice are incompatible with each other. Secondly, the socio-political and legal arrangement of a given

society reflects the sentiments and interests of the dominant class, which is apparently unjust.

Rawls acknowledges that different conceptions of justice are relatively reasonable to each other but he claims that, “the principle of justice and the related principles of natural duty and obligation define the most reasonable view among those on the list, others principles are not unreasonable.”⁹⁰ The incompatibility between the existing socio-political structure and generally accepted standards of justice eventually lead to civil disobedience. However if the principles of justice are not specifically violated then it will be illegitimate. In short civil disobedience is legitimate only when the principles of justice (derived in the original position) are structurally violated (by structural violation he simply means the establishment of such institution which i) either in conflict with the institution derive from the principles of justice or ii) against the spirit of the principles of justice). The structural violation indicates the contradiction between the theory and practice, though Rawls grants the reasonable deficiencies regarding the complete realization of the theory into practice. The structural violation may be identified as

- a) the incapacity of the theory to be practically realized,
- b) the methodological error in the institutionalization of the theory and
- c) the corruption of the agency of the just procedure i.e. (individuals) which is the decisive factor.

Rawls discusses the possibility of (a) and (b) while ignores (c) as a factor of injustice.⁹¹ Because he is apparently structuralist and does not deal with the role of agency in the establishment of just order.

Rawls acknowledges that the political process governed by the constitution is just but imperfect because no one “guarantees that the laws enacted in accordance with it, will be just.”⁹² He also accepts the practical deficiencies of procedural justice whereas “in practical affairs perfect procedural justice cannot be

achieved.”⁹³ There are a number of reasons for this imperfection as follows:

- (1) The role of voting or election for the continuation of constitutional process
- (2) Majoritarian suppression, i.e. the narrow and self interested pursuit of majority

Since disparities (either political or economic) are inevitable even in a well-ordered society, therefore it is only our natural duty to be committed with just institutions which compels us to “comply with unjust laws and policies”⁹⁴ or at least refrains us to pursue any illegal way to oppose unjust outcome (enacted legislation) of just institution until they do not exceed certain limits of injustice. It is important to note that “justice” in Rawlsian framework simply means the realization of the principles of justice. The problem arises that how the term “realization” is to be interpreted. The realization of the principles of justice is possible at two different levels namely formal level and practical level.

An institution is considered to be just if it formally accepts principles of justice as initial reference to the realization of a just social order. The institutional enforcement of the principles of justice is the practical dimension of the theory of justice. The dilemma is that if an institution fails to practically implement (though it is a question of interpretation of the principles of justice) the just principles, it eventually yields injustice in Rawlsian sense. Since the institutions are embrionically just (formal acceptance of the principles of justice) therefore illegal or violent political expression is not legitimate according to Rawls. It is important to note that the practical or actual realization of the principles of justice is a problem of interpretation. A highly complex hermeneutical activity is required to consider legislation just or unjust.

In theory, a well-ordered society is a contractual society. In such a society, all socio-economic, political relations are established on the basis of contract among equally free, rational self

interested individuals. Rawls believes that apparently it seems to be obnoxious that free, autonomous and self-interested individuals “rationally accept a procedure that may decide against (their) own opinion and give effect to that of others.”⁹⁵ Rawls emphasizes that despite all the limitations, constitutional democracy does have some substantive qualities which appeal to rational individuals to be committed with this political procedure. He offers two reasons in this regard. First, in the constitutional convention, very few procedures have been accepted unanimously. And there is no such procedure which always favours one group. Second, the minimal agreement at any procedure (political process governed by constitution) is a more better than no consensus at all. These pragmatic reasons reveal that constitutional democracy is, if not the best then one of the best political procedures. Rawls claims to identify three concrete facts which must be faced by any political process assuming the framework of constitutional democracy. The three facts are as follows:

- (1) The parties necessarily make concessions to each other for the realization of consociational ventures in the constitution of just political order.
- (2) The clashes regarding the interpretation of fairness are inevitable.
- (3) The choice of best possible constitution necessarily presumes some form of majority (suitably defined and circumscribed) role⁹⁶.

Rawls opines that the basic liberties can never be denied in any form of constitutionalism. He claims that constitutionalism is the only political form which guarantees equal liberty for all. He introduces the idea of “civility”. By civility he means a duty to tolerate the weaknesses of the inevitable imperfections in a constitutional system which is embrionically just. According to him, in a constitutional framework the role of majority is not ignorable. The consent of majority is necessary to ensure just and effective legislation. In a liberal political order, majority is a form of collectivity which is motivated by its general interests. He accepts majoritarian rule with certain conditions that it must

insure the, “political freedom, freedom of speech and assembly, freedom to take part in public affairs and influence by constitutional means, the cause of legislation and the guarantee of the fair value of these freedoms.”⁹⁷ However he acknowledges that majority rule does not necessarily legislate justly⁹⁸.

Rawls believes that the just political institutionalization must not be purely autocratic or technocratic. According to him, common people must be incorporated (through the process of election) in political decision making. He claims that the legislation is a highly complex hermeneutical activity even “rational legislator would often reach different conclusion, there is a necessity for a vote under ideal condition.”⁹⁹

Concluding Remarks

The natural outcome of the first principle of justice in political sphere is “universal suffrage”, i.e., equal political participation in the establishment of a constitutional body which “determines the outcome of the constitutional process and establishes the law with which they are to comply.”¹⁰⁰ Rawls is interested to ensure individual’s participation in the constitution of legal body and collective decision making even indirectly (i.e. by elected representatives) for the realization of basic fundamental rights. There are two specific arguments for this approach:

- a) Since everybody has equal right to pursue his own conception of good and interest in political sphere, therefore the exclusion of any individual or group from the power structure will necessary be exploited by the others¹⁰¹.
- b) Everybody has a unique capacity to participate in discussion (as consociational venture). The exclusion of any individual or group of individuals to participate in discussion negatively affects the quality of discussion and of course eventually affects the quality of final decision / agreement.¹⁰²

In Rawlsian framework the ideal political procedure or original agreement is not the manifestation of a compromise rather it is result of a fair bargain between opposing and self interested parties, who are trying to enhance their own interests. Therefore the importance of discussion and equal participation (direct or indirect) is necessary for the constitution of just and fair socio-political order. However, the legislative discussion must not be conceived as a contest between interests rather, “as an attempt to find the best policy as defined by the principles of justice.”¹⁰³ Rawls has precisely mentioned that a just constitution is one which, on the one hand, satisfies the two principles and on the other, produces just laws under the condition of ideal legislation.

Another important aspect which is needed to be highlighted is that the society emerges from such state / market relationship is market society. Market society is essentially a class based society, i.e., class domination of more advantaged class is the unintended consequence of market society. Rawls’s interventionist state stabilizes market society by protecting basic liberties and maximization of the benefits of the least advantaged group. In short we can say that the Rawlsian difference principle eliminates absolute poverty and legitimizes the enhancement of relative poverty as an unavoidable outcome of well-ordered society.

References to Chapter – 2

- ¹ See Thomas Pogge, Realizing Rawls, and Page 36 in which he identifies the possibility of consequentialism in Rawlsian formalism.
- ² Rawls John, A theory of Justice, Oxford University Press, Oxford, Page 196.
- ³ Ibid p. 196
- ⁴ Ibid p. 196
- ⁵ Ibid p. 196
- ⁶ Ibid p. 197
- ⁷ Rawls gradually lifts the veil of ignorance. He uses this theoretical instrument to transcend the barriers of prejudice and moral provincialism see page 197, T.J.
- ⁸ Ibid page 197
- ⁹ See Ibid page 197-8
- ¹⁰ Ibid page 197
- ¹¹ Ibid page 198
- ¹² Ibid page 199
- ¹³ Ibid page 199
- ¹⁴ Ibid page 199
- ¹⁵ Ibid page 200
- ¹⁶ Rawls J. A Theory of Justice op. cit p.57
- ¹⁷ Ibid page 201
- ¹⁸ Ibid page 202
- ¹⁹ This sort of analysis of the issue of freedom is borrowed from MacLannan's article "Negative and positive freedom" by Rawls (Dimensions of freedom, New York st. Martin's Press 1961)
- ²⁰ Rawls John A Theory of Justice op. cit page 202
- ²¹ Ibid page 17
- ²² However it is not the case, in reality, in liberal framework everybody is forced to be free. The prioritization of individual. Liberty disintegrates religious, racial cultural and even political communities.
- ²³ Rawls John A Theory of Justice op. cit page 19
- ²⁴ Ibid page 20
- ²⁵ Ibid page 21
- ²⁶ This capacity of majority eventually opens up the possibility of majoritarian dictatorship see Ibid page 222
- ²⁷ See Ibid page 222-223
- ²⁸ Ibid page 223
- ²⁹ Ibid page 224
- ³⁰ Ibid page 224
- ³¹ Ibid page 224
- ³² Ibid page 226

³³ Ibid page 226

³⁴ See Ibid page 227. The problem is that in his theory of justice Rawls categorically supports the liberal theory of political system and he obviously thinks that above mentioned problems will be eliminated by the reconciliation of the economic and political spheres (capitalism / liberalism) in the name of individual freedom.

³⁵ Ibid page 227

³⁶ Ibid page 258

³⁷ Ibid page 259

³⁸ Ibid page 260

³⁹ Ibid page 260

⁴⁰ See Ibid page 260, the reason of his deceptive flexibility is that Rawls prioritizes ‘right’ over the “good” in the constitution of just socio-political order and “good” has trivial significance in constitution of just socio-political order.

⁴¹ See page 258-62. It is theoretically claimed that in such political procedure any conception of good is realizable but in actuality it is not the case, because the conception of good which is organically linked with the Rawlsian conception of Justice is such, which deconstruct any particular conception of good, form of life, communal bond etc. which reject absolute priority of “individual freedom” as an only legitimate public good. The argument behind this claim will be discussed in our V chapter.

⁴² Ibid page 261

⁴³ Ibid page 261

⁴⁴ Ibid page 262

⁴⁵ Ibid page 263

⁴⁶ Ibid page 263

⁴⁷ Ibid page 274

⁴⁸ Politics is the domain of citizenship where as market is the realm of capital. Since Rawls believes in the autonomy of self. He considers individual as autonomous law giver, therefore he legitimizes the sovereignty of individual over that of market. In this context the role of state presumed by Rawls is decisive. Because in Rawlsian framework state is the only legitimate institution which sustains the individual’s sovereignty, autonomy and his capacity to master his destiny. It seems that Rawls believes that there are certain extra-market spaces in which extra-market relations can be developed. Secondly it also seems that he believes that state is the only legitimate agency to enforce any conception of good (derived by the overlapping consensus of interlocutors) for the general welfare of the

people (although Rawls is very suspicious about this term of welfare).

- ⁵⁰ Rawls John, A Theory of Justice op. cit page 276
⁵¹ Ibid page 277
⁵² Ibid page 277
⁵³ See Ibid page 276
⁵⁴ Rawls J. A Theory of Justice op. cit p.265
⁵⁵ Ibid p. 265
⁵⁶ See Ibid p. 266
⁵⁷ Ibid page 266
⁵⁸ Ibid page 266
⁵⁹ Ibid page 266
⁶⁰ Ibid page 267
⁶¹ Ibid page 267
⁶² Ibid page 267
⁶³ Ibid p. 197
⁶⁴ Ibid p. 268
⁶⁵ Fisk M. state / market in Rawls and the Agenda of Social Justice (ed.) by B. Ray Anamika publisher, New Delhi 2000 p. 246
⁶⁶ Ibid p. 249
⁶⁷ Ibid p. 255
⁶⁸ Rawls J. A Theory of Justice op. cit p. 108
⁶⁹ Ibid p. 108
⁷⁰ Bradley F.H. Ethical studies 2nd ed. Oxford Clarends Press 1927 p. 163 – 189. Quoted in A Theory of Justice by J. Rawls op. cit p. 71
⁷¹ Ibid p. 71
⁷² Ibid p. 111
⁷³ Ibid p. 112
⁷⁴ Ibid p. 144
⁷⁵ Ibid p. 114
⁷⁶ See Ibid p. 115
⁷⁷ Ibid 115
⁷⁸ Ibid page 334
⁷⁹ Ibid page 109
⁸⁰ Ibid page 109
⁸¹ See Ibid page 339. Between the lines the ulterior motive is actually interests i.e. to sacrifice short term or immediate interest for the protection of long term interests.
⁸² The Rawlsian conception of self is ontologically “antecedently individual” other wise the prioritization of individual’s freedom can not be possible. In the context of such conception of self-the question

of moral life is irrelevant. The moral questions like what “what should I want?” provides the criterion on the basis of which legitimate desires or wants can be judged. Since in Rawlsian system “right” has priority over “good” therefore the question of “good” is insignificant in the constitution of just social order. The theoretical corollary of this is that no moral life is possible, because to be moral there is a need of:

- a) Knowledge of intrinsic goodness.
- b) Agency or criterion to judge our desires, compatible with that of intrinsic goodness.

Since the question of “goodness” was suspended in the original position and it has trivial significance in the constitution of social justice. Therefore moral life is theoretically not possible in his system. There is one way to resolve this problem if we consider Rawlsian prioritization of right as “hyper good” and derived all implication from this good for instance. On the basis of that good one can differentiate between legitimate / illegitimate desires. In this way the questions like “what should I want” or “what should I desire” can specifically be answered. So on theoretical ground moral life would be possible. (see Ibid page 339)

⁸³ Ibid page 340

⁸⁴ Ibid page 341

⁸⁵ Ibid page 343

⁸⁶ Ibid page 343

⁸⁷ Ibid page 351

⁸⁸ Ibid page 351

⁸⁹ Ibid page 352

⁹⁰ Ibid page 352

⁹¹ It shows two things: (1) it seems that Rawls does not consider the role of agency, due to which it appears that he is a structuralist. (2) He prioritizes legality over morality, which is of course a structuralism approach regarding the solution of theory / practice contradiction.

⁹² Rawls J. A Theory of Justice page 353

⁹³ Ibid page 353

⁹⁴ Ibid page 354

⁹⁵ Ibid page 354

⁹⁶ These points reveals that although principles of justice affirm a social individualism even then the framework of justice as fairness is such in which “the parties give up any hope of free – rider egoism” (354 T.J.)

⁹⁷ This prioritization of freedom eventually disintegrates any form of collectivity which might be dangerous for constitutional democracy in future. Secondly Social atomization and pluralism are inevitable outcome of such political rule.

⁹⁸ (1) By just constitution he simply means “a constitution that would be agreed upon by rational delegates in a constitutional convention who are guided by the two principles of justice”. (357 T.J.).

(2) By just law and policies he simple means, the law and policies that would be enacted by “rational legislator who are constrained by just constitution and who are conscientiously trying to follow the principles of justice as their standard”. (357 T.J.)

⁹⁹ Rawlsian John A theory of Justice op. cit page 357

¹⁰⁰ Ibid page 221

¹⁰¹ I think this might be over simplified implication that in Rawlsian framework every body is free to pursue his own political interests. It is not the case, in Rawlsian framework everybody is free to pursue his own conception of good (or interest) subject to the constraint that the only public good is will to freedom. Therefore any political interest which in conflict with that of “will to freedom” is not only unrealizable in Rawlsian political framework but also legitimately suppressible.

¹⁰² This view also foresees Rawlsian condition that the principle of justice must necessarily be presumed in the constitutional as well as legislative stage. Therefore those who disagree with the legitimacy of the principles of justice are necessarily being excluded from the discussion. It implies that, Rawlsian theory of justice is not theory of justice per say it is a liberal theory of justice.

¹⁰³ Rawls J. A Theory of Justice op. cit page 357

CHAPTER III

Rawls as A Liberal

Rawlsian contribution in the revitalization of liberalism not just as a philosophical thought but as a whole socio-political theory is more than obvious. He provides a firm basis for the advancement in political philosophy. A theory of justice is the refined version of liberalism explicating its moral and political stances. He “revives the English tradition of Hume and Adam Smith, of Bentham and of John Stuart Mill, which insists on relating its political speculation to fundamental research in moral psychology and political economy”.¹

A theory of justice not only revives the tradition of moral and political philosophy but it also provides a legitimate realm for meaningful inter-disciplinary discourses. “The specification of Rawls’s conception of justice is a paradigmatically interdisciplinary enterprise”². This cross fertilizing quality of Rawlsian analysis is appreciated not just by the academicians but the popular press as well³.

It is an acknowledged fact that 1960s were a hard time for liberalism. On the one hand the socio-political conditions particularly in the United States, “the civil rights and black liberation movement, followed by the anti-Vietnam war movement, brought millions of people into conflict with existing political institutions”⁴. These adverse circumstances were brought into question the authenticity of liberal socio-political institutions. The intellectual animosity towards liberalism was ignited because, “liberal moral and political judgments were pitted against liberal political institutions, and these institutions were in turn defended by the liberal political arrangement”⁵. On the other hand, existentialist and post-modernist critique along with the prevailing positivism of analytic tradition play their role in the solemnization of its collapse.

Rawls restates the liberal argument at a time when liberalism was becoming unfashionable. Against the positivistic and new-left critique, Rawls provides a comprehensive and sophisticated statement regarding the actual liberal position (in its most diluted and acceptable form) and saves it from total ideological bankruptcy. "Logical positivism and the analytical approach seemed to abandon crucial issues of right and wrong in favor of technical questions about the emotive function of moral language and the meanings of moral and political terms"⁶. Rawlsian analysis plays a decisive role in the emancipation of moral and political discourse from mere semantic or linguistic analysis.

The term liberalism is being used in so many different ways that it may have lost its meaning. The word "liberal" was first used by a Spanish⁷ political party in order to define its political characteristics. Those who believe in the universality of liberal values, for instance Gore Vidal⁸ (a novelist) claims that pre-religious societies (Greeek / Roman) were embrionically liberal. The fundamental softness of life which is claimed to be provided by liberal public order was also available in pre-modern societies. By softness of public life one simply means that the private life of the individuals is not directly ordered by the totalitarian state craft⁹.

The general characteristics of the political form of liberalism are enough to interpret it as a modern phenomenon. The values of liberalism are derived from the intellectual evolution of Enlightenment thought in general. We can define¹⁰ liberalism under three core headings: firstly, liberalism as a socio-political movement, which prioritizes individual over all other forms of collectivities. Liberalism considers individual as an end in himself rather than a means to realize certain ends. Secondly, it considers freedom as ideal (i.e. individual's freedom) and institutionally protects individual freedom by considering it as a fundamental right of an individual. Thirdly, it considers tolerance as a fundamental value. The axiological significance of tolerance is organically linked with the priority of individual's freedom. This prioritization legitimizes the equality of incommensurable conceptions of good and demolishes any

system or hierarchy of values (i.e. value system of religion or kinship etc.), which does not recognize “will to freedom” as the only legitimate public good. Thus it provides the basis of a pluralistic society.

Another important characteristic of modern day liberalism (which is identified by Scottish enlightenment) is that it is a socio-political movement, which presumes an organic relation between liberty and commerce. Scottish Enlightenment establishes a relation between wealth and virtue¹¹. This intellectual movement redefines the traditional concept of civic virtue. The traditional concept of virtuous life “has its roots in Greek city states”¹². In such societies, virtuous man is considered as, a citizen who actively participates in political life, which is a frugal and orderly and always prepares for war. Such a virtuous man was to serve in the militia (and) it was very largely through popular participation in infantry warfare that the rights of citizenship were first gain”¹³. Smith rejects such conception of virtuous life¹⁴, because of two reasons: firstly, such conception of virtuous man does not respect individual’s freedom (as a legitimate public good) and tolerates slavery. Secondly, he does not consider poverty as a social evil and lives a frugal life. Scottish Enlightenment redefines the conception of virtuous man as one who ensures individual’s freedom and recognizes it as a fundamental right of every individual. Secondly, he considers poverty as a social evil. In substantive sense, poverty elimination and accumulation of wealth become the ultimate ends of a citizen in a civil society. This axiological transformation discovers an organic relationship between liberty and commerce because commerce is the science of wealth accumulation. The society emerges from this organic whole of liberty and commerce is considered as commercial society. Such society ensures individual’s freedom through institutional protection of fundamental rights, and it eliminates poverty through extra-market strategies by improving labour productivity, modernizing education system and developing infrastructure etc.

The liberal political philosophy has markedly been influenced by Scottish enlightenment. Thereby it is generally believed that

private property economy is an inevitable market mechanism to practice liberal values (in substantive sense). The thinkers we will discuss in these chapters are claimed to be liberals because they consider, individual as end in him, freedom as an ideal, tolerance as value and presume an organic relation between liberty and commerce. In this chapter, we are not interested to define the general theory of liberalism. We adopt a loose framework in order to trace the liberal origins of Rawlsian thought, so that we can interpret “justice as fairness” as a contemporary defence of liberalism.

We select those liberal thinkers who, we think, provide the philosophical grounds for the creation of “A theory of justice”. In this chapter, we analyze the thoughts of Locke, Kant and Mill and seek to understand their relationship to the Rawlsian theory of justice. We try to relate these thinkers in a single framework of political liberalism and establish their evolutionary relationship with justice as fairness. That is to say the Lockean constitutionalism and the prioritization of fundamental rights through contractarian doctrine, Kantian categorical imperative and the detachment of self from its ends and Mill’s idea of social cooperation and order coherently provide the intellectual basis of justice as fairness.

The chapter has been divided into two sections. The first section analyzes the thoughts of Locke, Kant and Mill and seeks to understand its relationship to Rawlsian theory of justice. The second section focuses on Rawlsian position in liberal tradition against these liberal thoughts.

Section - 1

1.1 John Locke (1632 – 1704)

The dominant theme of Lockean political philosophy is “human freedom”. His intellectual contribution (in political philosophy) can be divided into two parts. The first part consists of the first treatise, “Of Government”. The core concern of this work is the refutation of Filmer’s¹⁵ intellectual defence of the monarchical form of government. Filmer presumes that the King’s rule is legitimate on the basis of a divine right inherited by the King from Adam. The second part of Locke’s work consists of Book II of the “two treatises”. The work is basically three-dimensional; firstly, Locke analyzes the issues of political power; secondly, he relates the issue of political power with political right and lastly he explains the extent and limitation of civil government.

Lockean political philosophy rests upon the distinction between the state of nature and civil society. Locke believes that in the state of nature every individual is “equal” as well as “free”. The state of nature is independent of any social laws. Every individual is free to do what he wants to do. There is no social, moral or political obligation acknowledged by anyone. This position presumes equal freedom for all, but there is no social, moral or legal structure to protect or guarantee such individual’s freedom. Since individuals in the state of nature are the part of the nature therefore every individual is governed by natural law. In short in state of nature the individuals are not governed by any human law, in this sense it is the state of perfect freedom / equality. There are certain obligations necessary to sustain the state of perfect freedom. Thus, in the Lockean framework “law” is embryonically an instrument to sustain “liberty”. Locke claims that “in all the states of created being capable of laws, where there is no law there is no freedom”¹⁶. The Lockean state of nature is different from that of Hobbes. In the Hobbesian state of nature, every man is against everyman, he is in a state of war. On the other hand, in the Lockean framework individuals are motivated by “good will, mutual assistance and preservation”¹⁷. The Lockean idea of the state of nature is usually misconceived as the pre-political condition of man. Locke claims that the state

of nature is the absence of any commonly accepted governing agency or authority. "Men Living together according to reason, without a common superior on earth with authority to judge between them is properly the state of nature"¹⁸. The state of nature does not offer any system of rules, which ensures the actualization of individual's natural desire of mutual assistance and self-preservation. Although in state of nature every individual is free to determine his own conception of good, due to the absence of legal structure, arbitrary expressions of ruthless power are an unintended consequences of this perfect state of freedom and equality.

In contrast to the state of nature, Locke gives the idea of civil society. Civil society presumes an authority, which provides a criterion to judge between two or more groups. The criterion basically consists of a system of rights / duties¹⁹. Locke believes that "those who are united into one body and have a common established law and judicature to appeal to, with authority to decide controversies between them and punish offender, are in civil society one with another"²⁰. According to Locke, any expression of power independent of the system of rights eventually transforms a civil society into a state of war. The state of peace in contrast to this would be the state in which every expression of power is conditioned by a system of rights. The state of peace is only achieved in the presence of common unbiased judgment, structure of law and enforcing agency which are the essential features of a civil society²¹. The Lockean idea of private property is central in the establishment of a body of rights. Locke acknowledges that God has given everything in common to us but he also believes that there is a justification of privately owned property. According to him, in the state of nature, all that is produced naturally is in fact common to all but individual's effort or labour in natural phenomena justifies his share. For instance, "naturally cultivated oaks or apples may be claimed as common property, but the apples a man gathered from the trees in the wood has certainly appropriated them to himself"²². It is, according to Locke, the initial stage of ownership. He believes that every man owns his personhood this right cannot be violated. The property of an individual includes

“the labour of his body and the work of his hand”²³. Although the nature of the Locke’s political philosophy is secular both at theoretical and institutional levels. The spirit of his thought is very much equipped with Christian morality²⁴. Locke believes that God has created each and every thing in this world therefore no body has a right to spoil or destroy it. It is our right to make use of it, and consume it before it get, spoiled. Locke considers it as right, but apparently it seems that it is our duty to induce our labour before the naturally produced goods get spoiled. He believes that man’s conscious involvement with the natural phenomena is necessary to sustain their desire of mutual assistance and self-preservation. Therefore it is their legitimate right to participate in natural order and own what ever they have produced or accumulated. The individual effort or labour adds something to nature, which “improves it for the benefit of life and there in lay out something upon it that was his own, his labour”²⁵. It is important to note that the Lockean idea of ownership rests upon the assumption that there is enough land and water for everyone. The mode of economy in his mind was agro-based therefore the question of distribution and scarcity of production is not properly addressed by Locke.

The Lockean commitment to “individual freedom” is unquestionable. The Lockean idea of paternal power is very interesting and rests upon two principles: The legitimacy of the suspension of absolute rights and individual autonomy and legal obstacles.

Locke believes that children “are not born in the state of equality”²⁶. Initially they live (naturally) under the legitimate rule and jurisdiction of their parents. This constraint on individual’s autonomy is very important to understand the legal implications of this apparent violation of a basic human right. Since children are in their imperfect state, unable to bare the responsibility of liberty therefore their absolute right of freedom has been suspended. “When he comes to the estate that made his father a freeman, the son is a freeman too”²⁷. According to him, “law” has been misconceivedly considered as an obstacle in the

realization of individual's autonomy due to the misconception of both autonomy and law.

In Lockean framework, the neumerar of exchange of values is labour content but the distribution of resources is not derived from this labour contents. The value of a thing is dependant upon the fact that how much labour is consumed in its constitution. Labour is the starting point of capital. Since the conception of property derived from Lockean framework is a "capitalist property", therefore the essential function of property in this context is to accumulate capital for the sake of accumulation. The "body" is itself a capitalist property, therefore when ever an individual mixes his labour into anything he transforms it into capitalist property.

The Lockean conception of autonomy is derived from his conception of estate i.e. property. The purpose of law is to protect individual's property. The protection of property is considered to be synonymous to the protection of autonomy. Since Locke considers "body" as a property, therefore the expressions of body i.e. action, thought, etc. should also be protected through the system of laws. In this context he claims that the essential purpose of law is to protect individual's autonomy and freedom and "the end of law is not to abolish or restrain but preserve and enlarge freedom"²⁸. The enlargement of freedom means the maximization of individual's capacity to actualize absolute right of property without any obstical. Thus in civil society, the framework of law protects individual's "actions, possessions and his whole property"²⁹ from the arbitrary interventions of other and make individual's autonomy possible. There are some inviolable rights, which even the government cannot violate, for instance, the freedom of religion and conscience cannot be overridden by any agency and "no government should exercise force to promote or prohibit religious beliefs and practices"³⁰. Locke considers "religious commitment" as the private concern of individual and it has nothing to do with civil administration. He legitimizes a purely secular-socio-political framework, which not only guarantees individual's autonomy but also protects liberty of religion and

freedom of conscience. He considers secularization (i.e. plurality of religion on the basis of mutual respect and tolerance) as a condition of civility, which is necessary to institutionally protect the liberal values of tolerance and individual autonomy. He provides two arguments in this regard;

“The care of souls is not committed to the civil magistrate, any more than to other...

The care of the soul cannot belong to the civil magistrate because his power consists only in outward...

The care of salvation of man’s soul cannot belong to the magistrate, because through the rigour of laws and the force of penalties were capable to conceive and change men’s mind yet would not that help at all to the salvation of their souls”³¹.

It is important to note that Locke considers the Church to be a voluntary agency. On the other hand a state is the realm of involuntary relationships. Ecclesiastical law cannot be owned by individual as he owned property otherwise “the religion of the parents would descend unto children by the same right of inheritance is their temporal estates and every one would hold his faith by the same tenure he does his lands”³². This form of inheritance as inconceivable or absurd. This sort of ownership cannot be institutionally protected under the law of inheritance.

The state is basically a structure of legitimate obediences. The relevant question is that, if man is absolutely free (in the state of nature) then what is the justification of state control and legal restrictions. Locke believes that in the state of nature the individual is absolutely free but “the enjoyment of it is very uncertain, and constantly exposed to the invasion of others”³³. He considers interest as the basis of the constitution of political society, as people unite in the form of political society for the pursuit of their particular interests. For instance, the individual

“seeks out, and is willing to join in society with others who are already united, or have a mind to unit for the mutual preservation of their lives, liberties and estate”³⁴. Thus the fundamental right, which needs to be protected, is the right of property.

Locke claims that unlike the state of nature in political society individuals are not absolutely free. In the realm of civil society man has to sacrifice his freedom, equality and power. He relinquishes these absolute rights to the state for the pursuit of the general good i.e. mutual preservation of lives and estate. This means that the fundamental objective of a society and legislative body is “to secure everyone’s property”³⁵.

Locke acknowledges that the arbitrary expressions of the magistrate’s power are much more disastrous than the power struggles in the “state of nature” because in the “state of liberty” “they had a liberty to defend their right against the injuries of others, and were upon equal terms of force to maintain it, whether invaded by a single man, or any in combination”³⁶. The property rights are regulated by governmental agencies but government cannot abolish property right. However there is an open possibility of adjustment in property right. The legitimacy of taxation is derived from the consent of the majority. Any arbitrary attempt to violate the right of property is not tolerable. Locke believes that “if anyone shall claim a power to lay and levy taxes on the people by his own authority and without such consent of the people he thereby invades the fundamental law of property and subvert the end of government”³⁷. The existence of honest, unbiased systematically institutionalized legislative authority is inevitable for the preservation of property. The legislative body must guarantee individuals right of property. If the legislators violate this inviolable right of individual “then they put themselves into a state of war with the people who are thereupon absolved from any further obedience”³⁸. The abolition of private property justifies civil disobedience and legitimate use of force against violation of individual rights until the “establishment of a new legislation (such as they shall think fit) provide for their own safety and security which is the end for which they are in society”³⁹.

According to Mcpherson, Lockean emphasis on liberal ideology is determined by Locke's trust on "moral sufficiency of capitalist market production"⁴⁰. It is because of this reason that Locke defends capitalist property on the basis of his political theory. The constitutional defence of private property economy is presumed to be workable mechanism to practice liberal values. It has been acknowledged that "the word property and right are virtually synonymous in Locke's usage"⁴¹. However J. Tully is not convinced with Mcpherson's interpretation of Lockean political philosophy. Tully believes that Lockean liberal argument is not an absolute defence of capitalist democracy. He considers Locke's defence as historically determined defence of liberalism with no necessary and inevitable commitment to capitalism. Further he claims that by "property" Locke simply means "rights" which he was claiming for "all men as men in the historical political circumstances in which they find themselves"⁴². As far as the synonymity of words "right" and "property" (as expounded by Mcpherson) is concerned Tully considers it an interpretational error⁴³.

In this regard Dunn also opines that the Lockean defence of "right" through constitutional political procedure has been misinterpreted because "many of the rights which men held within this society were rights which had come to them through what one might term as the capitalist channel"⁴⁴. He claims that Lockean interpretation of "right" and his defence was a historically determined defence of liberal values. Further more Locke has never prioritized market rationality over fundamental human needs, and he is "entirely ready to see other immediate human needs over-riding them and limiting them"⁴⁵.

Locke is an empiricist on epistemological plain, but his political philosophy appears to be a collaboration of empiricism and rationalism. Lockean commitment with natural law is claimed to be "a part of his rationalism, his conviction that the universe is to be understood rationally"⁴⁶. But his epistemological position compels him to circumscribe the scope of human rationality and imposes a condition that rational understanding must necessarily be "compared with, made to fit into, the observed, the empirical fact, about the created world and human behaviour"⁴⁷. Locke's

epistemological position becomes vulnerable when he tries “to supplement his rationalism and empiricism with revelation”⁴⁸. For him natural law model is enough to derive a value structure which can hold society together but “the holy scriptures, rationally interpreted, were to be used almost as sources of empirically verified facts for moral and political purposes”⁴⁹. It implies that the pure reason is insufficient to derive moral and political values. Locke is skeptic about the “efficiency of reason not simply because it had failed to demonstrate morality but also because men obeyed it so little”⁵⁰.

Another important interpretation regarding the Lockean trust on liberal institutions is derived from his trust on Christian God. In other words Lockean liberal perspective is claimed to be derived from Christianity, and “all the values which Locke defended were values which he defended as vehicles of God’s purpose for man”⁵¹. Besides the Lockean defence of liberal values (i.e. tolerance, liberty and individuality) is also derived from Christian ethics. For instance the justification of individual’s autonomy is claimed to be derived from the possibility of the Day of Judgment. Every individual is free to choose between good and evil therefore liberty is necessary to differentiate a pious from sinner. He also justifies the values of tolerance and individuality by identifying an organic relation between them. According to him “the religious belief of all views were fully entitled to be tolerated because believing in god is something which one can only in principle do for oneself, as an individual”⁵². The Lockean claim concerning the derivation of liberal values from Christian Ethics is basically problematic because in liberal framework, individual (in his private sphere) is absolutely free to define, revise and rationally pursue his own conception of good. Moreover, in liberal framework individual is free to determine his conception of good subject to the constraint that it will not violate the pursuit of other’s conception of good. Finally, in liberal perspective, freedom means to be able to do what one wants to do. It implies that religious values in general, and Christian values in particular are in conflict with liberal values. For instance, in Christianity the good is not determined by the will of the people rather it is the will of God, and individual will

is necessarily subservient to that will. Further, in religious perspective individuals are not absolutely free (in their private sphere) to revise their private conceptions of the good because the revision of the conception of good must not violate the will of God. In religious perspective freedom means to be able to do what one ought to do. And the question, that what should man want? is answered in the light of revealed text. But as we have already mentioned in the Lockean sense there is an equal importance of the book of nature. The role of natural law is equally significant to derive moral and political ideas. However in liberal context there is no relevance of definite text (Bible). Even in Protestantism (which is claimed to be more secular approach towards Christianity) every body has equal right to interpret religion, but the reference of definite text is necessary for the legitimacy of interpretation. This simply means that even in Protestantism there is an obvious element of self-surrender and submission which clearly contradicts the liberal claim of absolute autonomy of individual. It is also worth mentioning that in liberal framework freedom does not mean to choose between good and evil (which are derived from the book of nature or from revelation) rather in liberal sense freedom means to be able to determine, define, frame or revise one's conception of good. So in liberal context the good is determined by the will of the individual.

The Lockean conception of "existential self-creation" affirms individual's emancipation from the power, dictation and domination of a superior being. At socio-political plane it is the replacement of the Christian God by self-governed autonomous rational man. Locke claims that if man emancipated himself from divine dependence then he could have no law but his own will, no end but himself. He would be a "good to himself and the satisfaction of his own will be the sole measure and end of all his actions"⁵³.

1.2 I. Kant (1724 – 1804)

Kant provides the metaphysical foundation for liberalism in general and constitutional democracy in particular. Kantian distinction between empirically determined reason and pure

practical reason is very significant regarding the absolute defence of liberal politics. The empirically determined reason guides our actions within a sphere of desire and instincts. The practical reason contains unconditional imperative i.e. it is not influenced or determined by our empirical awareness. Thus it deals with the formal aspect of the truth. Kant defends his idea of categorical imperative on the basis of pure practical reason. Thereby the validity of categorical imperative is not determined by its content rather by its form. Kant's idea of categorical imperative provides the justification of "pure law". This formal law of conduct provides the ultimate justification for the derivation of substantive moral principles. Categorical imperative is infact the principle of universalizability. The ethical principles which can be passed through the test of universalizability are considered as substantive moral laws. The conditions of the universalization may be conceived as follows; firstly the requirement to univeralize rules out differential treatment between individuals on arbitrary grounds. Secondly the truth value of the formal principle must not be determined by individual's personal preferences rather it must be true for all. Final and most importantly the formal principles which are being choosen by an individual must be independent of his particular value system. It means that the individual chooses principle as if he is "anyone" (i.e. not a person having specific identify and posses a specific value system).

Every ideology presumes a particular conception of the person. Kant provides the basic philosophical assumption underlying "right-based liberal"⁵⁴ perception of the person in general while that of Rawls is in particular. Kant provides an epistemological argument for the justification of a transcendental subject. His epistemological argument is grounded in the ontological incapacity of the subject regarding the possibility of self-knowledge. He believes that if the self is the sum total of desires, virtues and inclinations then it is not possible to apprehend a unified self in which all these desires, aims, dispositions etc. converge. And if there is a self, it is not empirically demonstrable. Introspective analysis cannot deliver self-awareness on the basis of these empirical appearances.

Nevertheless Kant claims that we can presume the possibility of a unified self. He says; "...I can grasp the manifold of the representation in one consciousness, and do I call the one and all mine. For otherwise I should have as many – colored and diverse a self as I have representation of which, I am conscious to myself"⁵⁵.

This means that there is an antecedently individuated self, which converges diverse perceptions and holds them together in a single consciousness or awareness. Kant believes that the experience of impressions and the object of experience are not the source of moral obligations. It is Reason which provides the basis of moral obligation (das Sollen). Kant acknowledges that external factors, natural causes and even sensory stimulations do affect the individual's derive to "will" something but he claims that "they can not produce (my state of) being under obligation..."⁵⁶. This rational sense of moral obligations helps us to unveil the conception of the self-presumed by Kant. The conception of reason presumed by Kant is two-dimensional. He believes that the individual can relate himself to the object, rationally "either by merely determining it and its concept... or making it real"⁵⁷. He considers the first function as theoretical and the other function as practical. Kant acknowledges that the conflict of desires is inevitable, however the nature of conflict has been differentiated by him. He contrasts the conflict of desires with the conflict of desire with "duty". The purpose of practical reason is to resolve this conflict between desire and duty. Korner believes that the Kantian linguistic expression presumes a particular structure of terminology and generally "the logical grammar of the term "duty" is different from the grammar of desire and impulse"⁵⁸. Moreover in the Kantian paradigm the "conflict of desire and duty simply means the "conflict of one desire with the other"⁵⁹. And the purpose of practical reason is to resolve this "conflict" with a sense of moral obligation. Thereby we consider Kantian ethics as rationality bounded by desires.

The Kantian idea of the categorical imperative is helpful in understanding a particular kind of "self" and the "ontological"

possibility of individual autonomy. Kant believes that everything in nature is determined by the Law. But “only rational being has the ability to act according to the presentation (Vorstellung) of the law i.e. according to principles”⁶⁰. This means that the individual’s capacity or autonomy to adopt maxims makes man’s existence moral or immoral. This reveals the inevitable link between the individual’s liberty and his morality. The Kant’s emphasis on the practical necessity of the categorical imperative makes his claim vulnerable because in his framework the choice of ends is governed by the order of desires individual has. Thus in concrete life situation people may have different ends because they may order their desires differently. So the difficulty arises that “our subjective qua-rational beings to the categorical imperative cannot be explained in terms of our seeking ends which depend on our desire”⁶¹. In order to resolve this difficulty Kant introduces a conception of the self, which is, an end in itself. Thus the transcendental “self” itself provides the ground for the necessity of practical law. This notion of “end” is independent of any kind of desire. This emancipation of the self from the instrumental chain of means / end relationship holds the harmony of every rational “will” and binds them together in a coherent moral order.

The Kantian notion of “self” is that of a “rational self”. Being a rational self it is an end in itself i.e. the “absolute end”. The theoretical corollary of this absolute end is that “man stands outside all causal chains and consequently outside every hierarchy of means and ends”⁶². The Kantian commitment with the prioritization of the rational self as an absolute end compels him to reformulate the structure of the categorical imperative in a manner that “Act in such a way that you treat humanity, both in your own person and in the person of all others, never as a means only but always equally as an end”⁶³. Kant claims that this new formulation of the categorical imperative provides same result as what we were getting from the old formulation of categorical imperative. Korner believes that this new formulation reflects the moral intuitions of human being in general and Western man in particular. Therefore the postulate, “man as end in himself”, corresponds to the “moral experiences at least to moral

experience of our culture”⁶⁴. Kant adopts an anthropocentric approach and presumes that the individual has a capacity to “will” autonomously. By autonomy Kant means individual’s ontological capacity to determine his ends and virtues independent of history and social determinism. The Kantian subject not only has the desire but also the capacity to determine his ends autonomously. His subject stands outside or independent of history and culture. Good-based liberalism (utilitarianism) has been rejected by Kantians like Rawls because, in it, the individual becomes a means to realize certain ends, as Kant considers the individual as an end-in-himself. In order to sustain the autonomy of the self, the value of non-interference has lexical priority over all other substantive values. The natural corollary of this precedence is that the right has priority over the good, i.e. “the subject is prior to his end”⁶⁵. The existence of the antecedently individuated self reveals that our voluntary actions are not determined by the community or culture but there is an autonomous and self determined agency functioning independently, of the world and standing outside history. This super-sensible paradigm of the self legitimizes the possibility of the existence of a free and transcendental subject. This transcendental subject is actually independent of the causal determinism prevailing in this sensible world. The subject is free, autonomous and self- determined. The conception of self emerges from Kantian analysis is as follows: the self is rational, autonomous and a-historical. The autonomy of the self emancipates it from the organic chain between means and ends, thus it is end in itself. This legitimizes the priority of right over the good. The rational self is not only subject to moral law (universal principle) but also the creator of it. This transcendently rational, unencumbered and antecedently individuated self is ontologically capable to legislate. The nature of legislation is universalist, because the “idea of the will of any rational being (is interpreted) as a universally legislative will”⁶⁶

Kant’s aim was to reconcile the antagonistic relationship between science and morality. He believes that the Newtonian world view provides the justification of universal determinism and the Rousseauian moral philosophy defends individual’s

autonomy. He tries to resolve this paradoxical co-existence of natural determinism and moral freedom by differentiating phenomenal world from noumenal world. In Kantian framework “the world of phenomena is what science can know, the world of noumena is the realm which is opened up by morality”⁶⁷. In order to discover the metaphysical foundation of liberalism this distinction between phenomena and noumena provides the basis of dualism in Kantian conception of self. Kant differentiates the lower self from that of upper one. The lower self is the phenomenal one, which is the part of empirical world. On the other hand the upper self is the noumenal aspect of self, which is the part of intellectual world (“the world of things in themselves”). This noumenal world is unknowable. Kant insists that although noumenal world can not be known it can be believed in. He introduces the concept of “rational belief”, the belief which leads us (beyond experience) to the idea of freedom. Thus as a noumenal being man is absolutely free. On the other hand in phenomenal world man is heteronomously determined. “This duality of human nature is over come in Kant’s kingdom of ends”⁶⁸. The kingdom of ends is a union of several rational individuals in a system of law. In such sphere all the ends determined by pure rational will are harmonized in an organic whole. In kingdom of ends “each individual realizes his private ends by means of the other and regards the other as an end in himself”⁶⁹. Thus we can say that the kingdom of ends is a sphere in which the actions determined by pure reason and actions determined by desires are completely harmonized with each other and the contradiction between reason and desire will be abolished. In Kantian framework “Kingdom of ends” is realized through a course of history. Thus the contradiction between the desires and pure reason will be eliminated through teleological process of self-development. Thus man as a rational being is teleologically destined to construct a perfect social arrangement i.e. Kingdom of ends.

1.3 J.S. Mill (1806-1873)

James Mill and Bentham believe that the principles of political philosophy and the practical rules which affect ethical conduct and political actions are deducible from some psychological

axioms or in other words from the law of human nature. Such derivation of the principles of political science on the basis of hedonic conception of human nature was rejected by number of political thinkers. For instance, Macavlay rejects Bentham's fundamental assumption that all human actions are guided by the desire for pleasure. He believes that the major cause of this incoherent deduction is that the conception of human nature presumed by Bentham was too narrow. Macavlay believes that historical specificity and observational analysis must incorporate the a-priori principle and political practices in order to develop a coherent methodology for the understanding of socio-political phenomena.

J.S. Mill was very much aware of the contemporary critique of Bentham and James Mill. Mill was not passionate about the validity of utilitarianism. According to him, the content of utilitarian theory is not correctly formalized. He firmly believes that if philosophical errors are removed from utilitarianism then it will be accepted as a just socio-political theory. Mill does not consider "progress" as a historically determined end. However he acknowledges that progress is the core concern of the philosophy of history. It is the dominant paradigm in which the history of a civilization can be assessed, evaluated and analyzed. It is because of this reason that philosophy of history has mostly been interpreted in terms of philosophy of progress of society. The historical analysis of the conception of "progress" helps us to understand, the political ideals, nature of society and state which emerge due to institutionalization of a particular conception of progress. According to Mill, such analysis helps us to rate our own level of civilization as the stage of civilization or have achieved or we have to achieve.

Mill does not ignore the role of "rules" and authority" for the sustenance of progressive social change. Mill is not very clear about the nature of the "efficient cause" of social progress. However critical analysis of his work reveals that, "individual liberty" is the necessary pre-condition for progress in his system of thought. He is confused in this regard because he acknowledged that most of the time it happens that even, "the

existence of the conditions of progress, does not guarantee that progress will occur⁷⁰. Progress is the by-product of ideas, analysis, critical, moral and intellectual efforts of the intelligentsia. Mill believes that individual liberty is a necessary pre-condition of intellectual growth, and progress is the natural corollary of the intellectual evolution. Mill believes that intellectual and critical discourse presumes a tolerant society. According to him the formation of efficient government, tolerant social structure and scientific progress are the ultimate indicators to judge the level of civilization.

The definition of the “general concept of freedom” is not the core concern of Mill’s work, rather his main focus is the problem of civil liberty. In this regard he analyzes the nature and parameters of civil power “which can legitimately be exercised by society over the individual”⁷¹. The expression of civil power necessarily constrains individual liberty. This legitimate expression of power for the protection of individual autonomy is the central issue of political philosophy. Sovereignty and liberty are the two issues, which are paradoxically co-existed. The inverse relationship between the two has manifested itself in the political history of democratic regimes. The sustenance of both dimensions of political life is inevitable yet contradictory. The natural outcome of this paradoxical relation between sovereignty of the state and individual’s autonomy is that the society is dichotomized into two different spheres. The one is the sphere of ruling body and other is the sphere of the people whom they ruled. Generally it is believed that there is an antagonistic relation between these two spheres. The ruling body (or government) prioritizes authority (thus act as sovereign), however the civilians identify themselves with liberty. Mill believes that the root cause of this antagonism lies in the monarchical state structure. In such political structure the ruling elite derives its authority from inheritance or conquest, which at all events, does not hold it at the pleasure of the governed⁷². This authoritative expression of power is generally conceived as “a weapon which they would attempt to use against their subject, no less than against external enemies”⁷³. Mill believes that the idea of liberty is derived from the limitation of this authoritative

power of the government. According to him, the limit which was set “to the power which the ruler should be suffered to exercise over the community... was what they meant by liberty”⁷⁴. Mill provides two different ways to constrain the authoritative power of the ruling body as follows;

- i) The derivation of the body of political rights/liberties. This system of rights protects individual sovereignty, which was infringed by the rulers. The violation of these rights justifies civil disobedience.
- ii) The derivation of a constitution by the elected representative of the people (on the basis of a system of rights/duties). This constitutional system of checks and balances provides both. Legitimate expression of political authority and protection of the sphere of individual sovereignty, independent of state coercion.

The phenomena of democratic rule is a very interesting attempt to resolve the contradiction between authority and liberty. Mill believes that the elected government is more or less representative of the general interest of the people, therefore these “temporary rulers become the prominent object of the exertions of the popular party, whatever any such party existed and superseded, to a considerable extent, the previous effort to limit the power of rulers”⁷⁵. According to him even in democratic rule the contradiction between sovereignty and liberty has not been eliminated. The purpose of political parties was to defend the interests of the general public by extending their sphere of liberty. What he is tries to emphasize is that even in democratic rule the interests of the ruling body (which are identified by authority) and that of general public (which are identified by liberty) may be dichotomized. It is because of this reason that the strategy to limit the political power of the ruling body was changed. The contradiction between the ruling body and general public can only be resolved by the identification of the mutual interests of both parties. It was intellectually demanded that “the rulers should be identified with the people;

that their interest and will should be the interest and will of the nation”⁷⁶. The major concern of this approach is to dilute the antagonism between the ruling elite and the general public. In this regard the ruling body itself becomes the instrument of the will of the people (or at-least that of majority), to determine, a legitimate private sphere of life, to protect individual autonomy i.e. to determine his own way to maximize pleasure with that sphere and to maintain balance between the public and private spheres of life. In short the harmony and balance between “individual independence and social control is a subject on which nearly everything remains to be done”⁷⁷.

The determination of the legitimate sphere of individual autonomy (right of self-determination) with the help of a body of right/duties along with the derivation of certain rules of conduct are necessary to sustain just socio-political order. These rules of conduct according to Mill simultaneously impose certain constraints on individuals to sustain a just public order (in the form of laws) as well as protect individual’s privacy and autonomy from other’s encroachments.

Mill differentiates government by Nature from government by convention. He believes that the existence of government, if explained in terms of nature, will be a deterministic political paradigm, in which no choice will be possible. On the other hand, conventionally grounded government is free government, which presumes unlimited choices. He rejects both the extremes as there is always a possibility of choices within certain limits. Government by nature is an essentialistic conception, which presumes a definite way to run governmental structure. He defines such government in terms of a fixed nature which leads us to a political procedure which is essentially deterministic in nature and abandons the possibility of the plurality of ways of life and choices. It presumes a definite procedure to realize those ends which are compatible with the essentialistic nature of the government. On the other hand, there is a government by convention, which presumes unlimited possibilities to actualize conventions through governmental structure. Since the essence of conventions lies in the form of life therefore there are

innumerable choices to actualize those conventions. In a democratic framework, Mill believes, the “will of the people,” means the will of the majority. It is because of this reason he acknowledges that the “tyranny of the majority” is an open possibility of this political framework⁷⁸. The domination of majoritarian dictatorship raises the question of “individual’s autonomy”. According to him there is a need for institutional protection of individual liberty “against the tyranny of the prevailing opinion and feeling”⁷⁹. He acknowledges that civil penalties are practical needs to sustain social order but even then he categorically claims that “there is a limit to the legitimate interference of collective opinion with individual independence: and to find that limit; and maintain it against the encroachment; is indispensable to the good conditions of human affairs, as protection against political despotism”⁸⁰. This shows Mill’s commitment to liberal values. It implies that the core concern of political theory on the one hand, is to determine those limits and encroachments which are indispensable for the sustenance of good human life. On the other hand it must ensure the area of non-interference or individual autonomy through the prioritization of certain inviolable rights. He identifies certain conditions, which are necessary for the establishment of popular government. These conditions are as follows:

- a) The existence of a particular system or institutional structure, which determines the body of right and duties.
- b) General acceptance of that, “system of government” along with the public willingness to keep that system standing.
- c) Its capacity to maintain and consolidate that particular system of government (particularly through educating people within the limits which are provided by the system of rights and duties).

Historically speaking, that form of government was being justified its existence by providing a guarantee to ensure “order” and achieve “progress. The problem arises when we try to prioritize order (i.e. rule of law) over progress (i.e. maximization of discounted consumption) or vice versa. Mill believes that

although progress is the ultimate aim of the government but the mechanism of the progress is not sustainable in the absence of 'security' and "order". There is no need to prioritize one over the other. Order and progress are organically linked with each other therefore a "good government that which achieves progress on the basis of order"⁸¹. His approach is basically teleological because he presumes a specific purpose of human existence (i.e. maximization of pleasure, the actualization of the desire of pleasure, because it is the most desirable desire). Thereby the conception of self is decisive to understand a particular socio-political order. This organic relation between ontology and politics is inevitable to determine the fundamental qualities of citizens, nature of moral order and statecraft. He believes that the legitimacy and the efficiency of the government are conditioned with her capacity to promote virtues which are compatible with individual's essential nature.

In Mill's framework although individual's liberty has its importance he considers individual liberty as a necessary condition of progress. Still he does not negate the importance of community (at political level). Government is fully responsible for developing and improving the life of its people. In this context the role of education is decisive. However he acknowledges that education is basically an evolutionary phenomena and it is dependent on the stage of development in which individuals are situated (i.e. their social environment). There is a linear chain of stages, the realization of one stage is lexically connected with the fulfillment of the other. Despotism is "a legitimate mode" to rule barbarians and savages⁸². But since there is an open possibility of improvement in political structures, therefore despotism should not be considered as an end. Self government is the most refined form of political evolution of human beings. He believes that the learning from the past and education for the future makes human development possible.

According to Mill that the nature of representative government is different from benevolent despotism. The benine dictatorship in the form of absolute rule of morally, spiritually or intellectually

developed individuals, might be beneficial but there are two major problems in such political alternative as follows:

- a) No proper institutional structure (equipped by a system of checks and balances) which ensures peaceful transference of power.
- b) No institutional security of individual rights and liberty is guaranteed.

Mill favors representative government because he claims that, it is a historically acknowledged fact that the freedom of the individual has ruthlessly been circumscribed in despotism which directly affects their prosperity and progress. Furthermore the rate of “obedience” in despotic regime (which is a necessary condition of authoritarian rule) undermines the priority of individual liberty, which negatively affects the intellectual, moral and political evolution and cultivation of a society. The intellectual stagnancy manifests itself in the form of moral corruption and structural deterioration of despotic regime. This argument presumes that high culture flourishes in a free or liberal society. Thus the essential function of a state is to provide as much freedom as possible to its citizen so that they can express themselves freely. For Mill self government is the best possible political framework. In this regard representative democracy is comparatively more practical than direct democracy. It implies that the democratic form of government is an ideal form of polity because:

- a) It provides institutional framework for the peaceful transference of power.
- b) It ensures individual rights.
- c) It provides a (legally protected) free space to develop the individual’s moral intellectual, creative and critical capacities (which provides the firm foundation of a civilization).

Mill’s commitment to utilitarian version of Hedonism directly affects his political philosophy. In his framework the prioritization of pleasure as fundamental good determines, the function of the government as well as values of the state and political ideas.

Mill's moral stand is basically the rejection of ethical intuitionism. He is not satisfied with the claim that the distinction between good and evil could be known a-priori. He claims that the "fundamental principles of morality is known by experience"⁸³. He also provides an inductive proof regarding the priority of "greatest happiness principle" by reconstructing Bentham's view of naive utilitarianism. He introduces a distinction between qualitative and quantitative pleasures and prioritizes qualitative pleasures over quantitative ones. This prioritization serves two purposes:

- a) Provides a criterion (hedonic) to judge between higher or lower quality moral life.
- b) Provides a justification for the maximization of high quality pleasures at the cost of legitimate pain or "the sacrifice of the inferior pleasure"⁸⁴.

The prioritization of qualitative pleasure reinterprets utilitarian moral account which directly affects utilitarian political theory and its socio-political implications. The three dimensional affect of such prioritization on utilitarian political thought is identified by progress in general and progress of society in particular, liberty in general and individual freedom in particular and social justice in general and conception of government in particular.

The pursuit of higher quality pleasures provides a criterion to differentiate between civilized and uncivilized societies. While the promotion for higher quality pleasures eventually promotes the well-being of society in general. Mill believes that self-government is a kind of political framework in which the antagonism between the ruling body and the general public is gradually reduced. However he acknowledges that this elimination of antagonistic tussel has its own drawbacks, the most important of which is the threat to individual freedom. The emancipation of society from state control may be capitalized by few individuals and start to dominate and determine the will of the people. Therefore there is a need to define and protect the legitimate realm of non-interference through a body of rights.

Generally it is presumed that Mill's prioritization of utility as fundamental good undermines the importance of liberty. But he considers individual liberty as a practical precondition for the realization of satisfaction and progress. Higher quality pleasures according to him are only realizable in a free society. Individual liberty is a necessary requirement for the sustainable growth and progress. Lastly he believes that the quest for high quality pleasures reflects the purity of individual's self-hood which directly affects the moral life of the other members of a society. The pursuit of high quality pleasures provides a healthy and mature basis of social cooperation. This implies that utilitarian framework provides a moral sphere necessary to establish and sustain a just legal and political order. This distinction between qualitative / quantitative aspects of pleasure is also decisive to determine the responsibilities of the government, to justify its legal policies and justify state control over individuals (i.e. constraints on individual liberty).

Mill believes that the state is not only an instrument to produce maximum pleasure, which is preferred by the majority of the citizen rather it must prioritize high quality pleasure over low quality pleasure. Furthermore state must facilitate those people who promote high quality pleasure which are necessary for the cultivation and intellectual growth of that society. If the majority of the citizen fails to appreciate high quality pleasures then the "government has the responsibility for having its citizens educated to pursue the higher pleasure in place of the lower pleasure"⁸⁵.

Mill considers representative democracy as the best possible political procedure for self-governance. However he acknowledges that constitution of a representative government is not error free. Where as the legislative body, judiciary and executive agency are considered to be the major institutions of state. And most importantly the proper functioning of these institutions requires highly skilled and technically advanced personnel. He seems to believe that the voters are not in the position to select these peoples on the basis of their merit.

Therefore he appears to be in favor of controlled technocratic form of government.

In his framework the representatives are not the part of the ruling body rather they constitute a sort of supra-governmental body which controls governmental decisions in favor of the populace. Furthermore he believes that there is a radical distinction between “controlling the business of government and actually doing it”⁸⁶. This distinction is very crucial because Mill is not in favor of uncontrolled democracy. He has differentiated between two forms of representative democracies:

- 1) Representative democracy in which the government is ruled by the representatives of the people. He termed it as uncontrolled democracy.
- 2) The democracy in which the government is ruled with the help of experts however their decisions are controlled and circumscribed by the representatives of the people according to their wishes and (general) interests of the people.

Mill believes that the uncontrolled democracy is in fact against the demand of justice because it will eventually collapse into the dictatorship of the majority.

It is presumed that history of liberalism is the history of tolerance. The liberal thinkers reduce society into individual. Which is its fundamental unit that is to say the individual legitimizes the accommodation of one's idiosyncratic opinions on the basis of liberal values of tolerance and respect of other's autonomy. In Lockean paradigm there is a compatibility between liberal values and Christian morality though in Christianity these values are defended on the basis of faith while in secular framework, “tolerance and respect for persons have based their cases upon a conception of the claims of reasons”⁸⁷.

The secular defence of liberal values (liberty, tolerance, privacy and self determination) has two different dimensions. The rational defence of individual's moral life is provided Kant. The other defence is provided by J. Stuart Mill with a reasonable

touch of empiricism and scientific rationality. No doubt that the conception of rationality used by these thinkers is very much different from each other. But we can roughly say that in Kantian framework the individual's will, moral self and pure reason are organically linked with each other. He successfully justifies the autonomy of "individual's will" by the reconciliation of the idea of moral duty and the natural order of causal determinism. His idea of duty is in fact a theoretical instrument which rationally justifies the Christian ethics through a secular framework. On the basis of categorical imperative Kant justifies most of the Christian values (which can not rationally be justified in the absence of his values of responsibility / duty). He defends his idea of duty by the prioritization of upper self which is rational, autonomous and independent of natural causal order. This does not mean that Kant denies natural causality but he believes that individual capacity to rationalize, enable him to transcend natural order of causality and to grasp formal relations. Therefore in Kantian framework the validity of individual moral acts are conditioned by the autonomy of will. The ontological justification of the autonomy of self and its capacity to provide universally valid moral values justifies the priority of individual liberty, as an inviolable right which is necessary to sustain moral structure and social justice. The priority of right, duty of tolerance and respect of other's autonomy are the inevitable corollaries of Kantian philosophy. "The duty of individual autonomy readily implies the right to individual autonomy; and an individual's right to individual autonomy plainly implies their duty to respect the autonomy of others"⁸⁸. The philosophical defence of liberal values on the basis of external reason (universally valid reason) justifies its universality. The individual autonomy of self lies in the possession of soul. In Kantian framework, human beings are, as possessors of soul, able to discover universally valid moral principles. This ability of self is derived from the specific interpretation of man as "the possessor of reason"⁸⁹. This formal rationality criterion provided by Kant is one of the major defence of the universality of liberalism. The possession of rational self provides an ontological justification of Archimedean position, which transcends cultural, social and historical specificities. This capacity of self to have an access in

an a-historical realm is justifiable “because the possession of soul can be a wholly external characteristic of man as a member of society”⁹⁰.

Mill attempts to revitalize the intellectual virtues of Bantham and James Mill. He tries to emancipate utilitarian version (of Bantham) from scienticization. He introduces the distinctions between qualitative and quantitative pleasures and establishes an organic relation between liberty, pleasure and progress. The methodology he adopts to reconcile liberty and utility does prioritize utility as a fundamental good but it does not negate the importance of individual autonomy in his system of thought. Maximization of happiness is necessary but not sufficient in absence of individual’s autonomy. Mill does not defend liberal values on ontological ground but he clearly presumes a teleological argument to justify the organic link between pleasure, liberty and progress. Mill’s teleologically grounded and psychologically backed utilitarian version of liberalism claims that since pleasures happiness or utility is the only desirable end therefore people must desire it. This view is challenged by the anti-teleological and anti-consequentialist school of right based liberalism. This new brand of expounded by Rawls plays a significant role in the “emancipation” of liberalism from the utilitarian paradigm. The good-based-liberalism of Mill is rejected by the right-based-liberals on the basis of two objections as follows:

- a) The foundations of utilitarianism (i.e. utility, satisfaction happiness etc.) are unreliable.
- b) The utilitarian version proves itself highly illiberal, coercive and unfair.

The utilitarian grounds for the constitution of just order are not reliable precisely in the sense that the principle presumes an object (utility, satisfaction, happiness etc.) of stimulation which actually determines the will. The natural corollary of this presumption is that it becomes empirical and eventually collapses into consequentialism. It is because of this consequential predication of utilitarianism that most of the time it happens that “the general welfare overrides justice rather than secure it”⁹¹.

Section – II

2. Rawls and Liberal Legacy

Rawls revitalizes the liberal argument when liberalism was becoming unfashionable. He redefines liberal theory and improves the institutional structure provided by Locke, Kant and Mill for the sustenance of liberalism. He is not satisfied with good-based-liberalism expounded by the utilitarians. He considers that “utilitarianism is a teleological theory whereas justice as fairness is not”⁹². He claims that utilitarian version of liberalism is basically teleological therefore it eventually collapses into consequentialism. This consequentialism is the result of the prioritization of good-over-right, which undermines the priority of individual’s right of self-determination. Justice as fairness is defined as a liberal theory which “either does not specify the good independently from right, or does not interpret the right as maximizing the good”⁹³. For him the priority of individual liberty must be considered as an absolute right, which cannot be overridden even for the general welfare of the society. So he justifies the priority of right over the good. This precedence of right over the good has been considered fundamentally a moral category, because everybody has a right to frame, revise and rationally pursue his own conception of good. The priority of right over the good justifies the anti-consequential and anti-teleological nature of justice as fairness. In short it is claimed that in Rawlsian framework the value of non-interference is not derived from substantive values. “The right is prior to the good not only in that its claim taken precedence but also in that its principles are independently derived”⁹⁴.

Rawls consider his right-based-liberalism as a deontological theory. He defines his deontological liberalism as, “..... a theory about justice and in particular about the primacy of justice among moral and political ideals”⁹⁵. In this section we will try to excavate the ontological assumptions of Rawlsian right-based-liberalism which sustain the priority of right over good in general and principles of justice in particular, this excavation eventually challenges its claim to be deontological in substantive sense.

2.1. (Justice as fairness in relation to Locke)

The nature of the agreement, which takes place in original position is embrionically contactarian. Rawlsian social contract model is the evolutionary form of the contractarian approach of Locke, Rousseau and Kant⁹⁶. Lockean commitment with the prioritization of fundamental rights and its corresponding institutions (i.e. private property economy and constitutional democracy) identifies the organic relation between justices as fairness and Locke's contract doctrine.

The protection of fundamental rights in Lockean framework through a body of rights is decisive for the constitution of civil society and its corresponding institutions. Rawls believes that "[for]the role of equal rights in Locke is precisely to ensure that the permissible departure from the state of nature are those which respect these rights and serve the common interests"⁹⁷. It implies that the realization of common interest dependant on the respect of individual liberty and its institutional protection through a system of law. Rawls also appreciates the conditions of formal equality which are established by Locke in the state of nature. He thinks that the core concern of the constraints (which Locke introduces) is to ensure the condition that rational men concerned to advance their ends could consent them in the state of equality"⁹⁸. This form of equality is decisive for the establishment of the formal conditions which are necessary for the emergence of civil society and its corresponding institutions. He improves the conditions of formal equality established by Locke through the constraints of original position (i.e. veil of ignores) and provides a relatively more secular and pluralistic framework for the derivation of fair principles of social justice. The principles of social justice must be general in nature"⁹⁹. By general he simply means that the principles should not be influenced by the particularities or contingencies of individuals or associations. The Lockean defence of liberal values has Christian origin. The fundamental moral principle presumed by Locke is of teleological nature, because he believes that "if a person created by another..., then that person has a duty to comply with the percepts set to him by his creator"¹⁰⁰. It is claimed by implication that Lockean defence is of particular

nature and does not meet the demand of plurality, Rawls is not convinced by this claim. According to him the fundamental moral principle presumed by Locke is essentially general in nature, though “the nature of the world on Locke’s view, it singles out God as the legitimate moral authority”¹⁰¹. In Lockean framework there is a compatibility between liberal value and Christian morality, but in Christianity these values are defended on the basis of faith, but in secular framework “tolerance and respect for persons have based their cases upon a conception of the claims of reasons”¹⁰². Thus Rawls claims that the fundamental moral principle presumed by Locke is teleological but “the condition of generality is not violated although it appear so at first sight”¹⁰³.

Locke was the most celebrated exponent of liberal constitutionalism during the late seventeenth century. Lockean thought is basically a liberal defence of capitalist form of economy and he “was incautious enough to describe the purpose of government as preservation of property”¹⁰⁴. Therefore it is generally believed that Lockean defence of liberal values is infact the defence of capitalist rationality. This charge is not justifiable because, “Locke, coming early in the history of capitalist ideology could see only the massive enhancement of human freedom which these institutions can engender”¹⁰⁵. Thus Lockean defence of capitalist “property right” is of instrumental nature, because capitalist property right are presumed to be a mean to maximize individual liberty. It implies that his defence was historically determined. Mill’s approach regarding the protection of liberal values is much more cautious as compared to that of Locke because “capitalist society, Mill could see as Locke could not, fostered a narrow egoist individualism at the expense of free, inventive and generous individuality”¹⁰⁶. Unlike Locke and Mill, Rawls is much more aware of the antagonistic relationship between state and market. There has been no state governed “redistributive mechanism” of resources identified by Locke and Mill, which according to Rawls is inevitable to practice liberal values and sustain liberal public order. He tries to overcome the theoretical and the institutional weaknesses in liberal political theory and its corresponding institutions. In short

we can say that Lockean commitment with the prioritization of fundamental rights as a basis of contract is fascinating far Rawls. He acknowledges that “there is offhand no conflict with the priority of justice and no incompatibility between Locke’s contract doctrine”¹⁰⁷.

2.2. Justice as fairness in relation to Kant

The structure or constraints of original position tell us how Kantian metaphysical conceptions are incorporated by Rawls. The derivation of the principles of justice behind the veil of ignores reveals that the choice of the fair principles is not on the basis of the value or interest perspective of particular individuals rather as if they are anyone. Since individuals are ignorant about their own conceptions of good and social position, therefore they must choose principles of justice which protect their interests irrespective of those interests and values which are organically linked with the type of person they turn out to be in real world. The structure of original position and the theoretical instrument of “veil of ignores” is an intellectual attempt to reconcile the pure reason and desires in an organic whole. The original position is a hypothetical choice situation in which empirical self and rational self combine together in order to derive fair principles of justice. The individuals in original position are both phenomenal beings, in the sense that they are self-interested and noumenal beings, in that they choose abstract and fair principles of justice as if they were anyone (i.e. independent of their particularities). In this way Rawls provides a reinterpretation of the functioning of “Kingdom of end” in a contemporary modern democratic societies.

Rawls’s idea of “original position” helps us unveil his metaphysical assumptions, which sustain his liberal political theory. The constraints of original position embody “the fundamental principles governing our moral powers (and) our sense of justice”¹⁰⁸. It implies that original position presumes a schematic representation of a particular mental process of most human beings¹⁰⁹.

There is an important distinction between Kant and Rawls, although both consider individual as end in himself, Kant is primarily concerned with duty while Rawls is primarily concerned with right. Kant emphasizes the importance of duty to determine the moral quality of an act. Whereas Rawlsian approach is right based. Rawls is not interested to discover the intrinsic or essential worth of moral act or value. In his framework actions are means for the protection of individual rights.

The prioritization of right over good is the defining characteristic of Rawlsian right-based-liberalism. The basic right(i.e. the right of an individual to be treated equally) is claimed to be natural because the prioritization of right is not the products of legislation or a hypothetical contract. This prioritization emerges from the metaphysical assumptions which are interwove in the fabric of original position. The prioritization of right is not the product of contract rather it constitutes the independent grounds for judging legislation, customs and convictions. The principles of justice and their corresponding institutions, protect priority of fundamental rights (i.e. right of a man to be treated equally) and all other rights all actually derived from this natural right.

According to Rawls there are two kinds of equalities namely substantive equality and formal equality. The substantive equality involves the distribution of material resources (i.e. primary good) and it is defined Rawls' difference principle. The formal equality, as applied to the self-respect of individuals irrespective of their social position, is protected by Rawls through the institutionalization of the first principle of justice. The right of an individual "to be treated equally" is not derived from original position rather "it is owed to human beings as moral persons"¹¹⁰. Since it is possessed by all the contractors in the original position therefore the protection of this right is end in itself. The conception of self derived from Rawlsian analysis is antecedently individuated self. The individuals are presumed to be free to choose any rational plan of life' in a way that puts no antecedent restrictions on the sorts of life plans that are chosen¹¹¹. This conception of antecedently individuated self is

generally accepted by liberal thinkers. For instance Locke claims that, “naturally free persons are able to act without asking leave or dependent upon the will of any other”¹¹². The constraints of the original position reveal that Rawls presumes that human beings are by nature free and rational. These assumptions (as we have already seen) are equally consistent with the framework of Locke and Kant. Rawls claims that when an individual knowingly act on the principles of justice, he deliberately assumes the limitations of the original position, so “one reason for doing this is to give expression to one’s nature”¹¹³. The significance of this claim is that Rawls tries to justify neutrality of the liberal institutions (i.e. constitutional democracy and private property economy) by showing that liberal democracies are assumed to be natural order.

Rawlsian idea of rationality is also very interesting because in his framework being rational means being self-interested. Self interestedness is appeared to be a natural characteristic of the contractors in the original position. The self-interested individuals naturally agree to the principles of justice so as to maximize their individual interests. This reveals an instrumental character of Rawlsian state because state is only an instrument for the actualization of the general will of the self-interested individuals. Rawls also claims that the contractors in the original all are presumed to be equally moral. The individual’s sense of morality is judge on the basis of his ability to choose a rational and definite plane of life as well as by his “ability to choose between just and unjust”¹¹⁴. The equal moral sense of an individual justifies Rawls’ claim that “all the persons are naturally capable of taking the point of view of the whole”¹¹⁵.

In Rawlsian framework the self “is prior to the ends affirmed by it”,¹¹⁶. It implies that an individual autonomously chooses his ends while the ends (an individual possesses) do not constitute his self. So an individual is ontologically free to determine, change, revise and frame his own conceptions of the good. And in such determination he is not dependent on anything other than himself. Thus according to Rawls a “moral person is a subject with ends he has chosen and his fundamental preferences are for

conditions that enable him to pursue a mode of life that expresses his nature as a free, equal rational being”¹¹⁷. The worth of the self is not determined by the ends it has chosen. Since ends are determined by equally free, moral and rational individuals therefore, all ends are of equal worth and value. As Rawls claims that “imagine someone whose only pleasure is to count blades of grass... the definition of the good forces us to admit that the good for this man is indeed the counting of blades of grass”¹¹⁸. This Rawlsian example is very revealing to analyze the unity and possessions of the self. If all the ends are of equal value (because individuals are naturally free to determine their ends) then the unity of the self is achieved by an arbitrary act of will. It means that Rawlsian self is ontologically dispossessed, because it is always at a distance from its ends. Thus his ends, and conception of goods are possessed by it but they (ends) can never be constitutive of a self. So it (self) always devoid of any specific, inseparable good which constitutes its selfhood, thus it remains empty. This hollow self is ontologically incapable not only to understand others but also itself. It is because of this dispossessed self, one can choose any “good” or “end” that one likes to choose in a liberal democratic institutional structure provided by Rawls. Since the self-knowledge is not ontologically possible (by implications) in Rawlsian framework therefore objective ordering of desires is also not possible in it. The relative merits of desires are determined by simply the concatenation of desires. Thus the moral life of an individual becomes insignificant or trivial regarding the sustenance of just socio-political order.

Rawls tries to institutionally protect the postulate that “man is an end in himself”, which is embryonically Kantian and which reflects the moral intuitions of Western culture. He protects this notion by the prioritization of right over the good, i.e. individual’s liberty as a first principle of justice. But the Rawlsian notion of the primary goods as means to realize all other ends is a problematic dimension of the theory of justice. There is a need to understand the organic relation between the Rawlsian conception of social unity, primary goods and his conception of person. Rawls believes that the legitimacy of the

appropriate claims of the citizens regarding the conceptions of the good (which are basically incommensurable) is understandable within the context of a conception of the person and its organic relationship with the primary good index. The principles of justice are applicable to the basic structure of a society. Since he defines society as a system of social cooperation therefore he claims that self-interested individuals are basically moral and “honour the constraints of social cooperation for the mutual benefit of all”¹¹⁹.

Rawls considers Locke, Kant and Mill as liberals due to their commitment to individual autonomy. The defining characteristic of liberalism, which contrasts it from the work of Plato, Aristotle and Christian thought represented by Aquinas and Augustine is the possibility of the plurality of the conceptions of the good in a free democratic society. For Rawls the conception of the person presumed by utilitarians is a major obstacle in the realization of pluralism. He categorically claims that “classical utilitarianism and the contemporary version of utilitarianism imply a conception of the person which makes this doctrine incompatible with the presupposition that there are many rational conceptions of the good”¹²⁰. In order to understand his idea of social justice, the Rawlsian conception of the person and its relation with the accumulation of primary goods is very crucial, Rawls considers:

- i) Each person to be a moral person.
- ii) Each person is defined as “someone who desires to take part in social cooperation”¹²¹.
- iii) The moral life of each person is rested upon the highest order interests of that individual.
- iv) The highest order interests of the person are:
 - a. The realization of his own interests.
 - b. The exercise of two capacities
 - i. His capacity to acknowledge or honour the fair terms of cooperation.
 - ii. The capacity to define, decide, revise and rationally pursue his own conception of the good.

So the conception of the person which sustains the Rawlsian procedural conception of justice as fairness in a concrete life situation is a person who has, “both the capacity and the desire to cooperate on fair terms with others for reciprocal advantage”¹²². So the defining characteristics of Rawlsian conception of person are equally free, rational and self-interested. These qualities are claimed to be necessary for the realization of fair bargain among mutually disinterested individuals in original position.

The role of primary goods in the process of fair bargaining and the assessment of the principles of justice is decisive. Rawls categorically accepts the organic relation between the conception of the person and the desire for primary goods. The principles of justice provide the basis of an effective, efficient and fair distributive mechanism of these primary goods. According to Rawls the idea of original agreement is rested upon the assumption that “the parties can best represent citizens as free and equal moral persons by deciding between alternative principles of justice according to **how securely these principles provide for all citizens the primary goods**”¹²³ (emphasis added). Rawlsian prioritization of the primary goods is very important to excavate the ontological and moral assumptions, presumed by Rawls. He considers primary goods as value free precisely in the sense that they are the natural instruments for the realization of the rational ends of a person. For instance: individual liberty is considered as a primary good. It is a necessary requirement for the sustenance of the individual capacity to change, revise and rationally pursue his own conception of the good. Furthermore the equality of opportunity is also very important for the free pursuit of final ends. Power and prerogatives of offices are also considered as necessary for the enhancement of the social interaction and cooperation among individuals. Income and wealth are considered as instruments for the realization of a wide variety of ends. Lastly social basis of self-respect (i.e. individual capacity to revise his own conceptions of the good) is dependent upon the individual capacity to accumulate income, power, wealth and authority, to consolidate individual’s confidence and sense of worth as moral person. Therefore “the parties (in the original) reliance on

primary goods is rational”¹²⁴. The moral status of a person is organically linked with the individual sense of self-respect. Rawls claims that “the primary goods are necessary conditions for realizing the powers of moral personality”¹²⁵. It is interesting to note that the social basis of self-respect is rested upon the individual’s capacity to accumulate these primary goods. This implies that the individual pursuit of these primary goods is in fact a moral activity. Moreover in the Rawlsian system individuals are free to choose their ends, whatever they want. But every choice is being realized through these primary goods. Therefore individuals are condemned to pursue these primary goods. For the realization of the ends which are freely chosen by the rational individuals. So in a well-ordered society the most desirable desire is the desire for these primary goods because these are the legitimate instruments for the realization of rational ends. In more precise sense the inevitability of the primary goods as mean to realize freely determined ends makes the Rawlsian idea of freedom as fictitious. The only choice individual has is the choice of pursuing these primary goods.

Rawls believes that the highest-order-interests of the individual determine the moral status of a person. These highest-order-interests justify the lexical ordering of the principles of justice in relation to the relative merits of the claims regarding the distributive share of these primary goods. The priority of primary goods is not historically determined or culturally specific because “the characterization of primary goods does not rest on historical or social facts”¹²⁶. However he acknowledges that the determination of the list of primary goods is basically an epistemological activity and this epistemological discourse is possible only “in the light of a conception of the person given in advance”¹²⁷.

Whenever we talk about any particular conception of the person, no matter how formal the conception is, there are some normative claims associated with this conception. For instance: what is the justification for the Rawlsian claim that the sanctity of higher order-interest of the individual lies in the prioritization of right over the good. The conception of the person presumed

by Rawls is based on a particular worldview. The Rawlsian rationalization regarding the social, moral and political issues must be compatible with this worldview, which reflects the moral intuitions of Western society. This metaphysical presumption prioritizes a particular kind of life style and a particular kind of value structure.

Two fundamental questions are relevant in this context.

- a) Is the Rawlsian argument universalist or culture specific?
- b) To what extent is Rawls justified in his claim about the equality of substantive (private) conceptions of the good?

The idea of the original position is an abstraction from the particularity of the contractors. The blockage of the knowledge through the veil of ignorance neutralizes the particular differences among the individuals so that they can derive such principles of justice, which can be used as a pre-amble for the constitution of a just political order. Rawls considers the original position as an “Archimedean position”¹²⁸ due to which it seems that the Rawlsian principles of justice are claimed to be universalizable. This universalizability of the principles of justice is the manifestation of the prioritization of “external (public) reason”, which is central in justifying the politics of rights. The external reason sustains the equality of all substantive (private) values by the prioritization of the value of non-interference, reflecting the higher order interests of the contractors in the original position.

If we remove external reason from liberal ideology then the distinction between substantive values and the value of non-interference becomes fictitious. It is external reason which justifies this presumed non-contestability between the substantive values and the values of non-interference. The structure of the original position reveals that Rawls is aware of the impact of content over the form of rationality. He knows that the particularity of the individual (contractor) does affect the neutrality or impartiality of his deduction irrespective of the fact that how rational and self-interested the contractors are. With the

help of the veil of ignorance Rawls is trying to emphasize that the value of non-interference is not derived from any of the substantive values of the contractor. It is derived by the external reason, which is independent of the lower order desires, a-historical and independent of culture or linguistic community. That's why Rawls claims that the first principle has lexical priority over the second principle; liberty always reflects the higher order interest of the individuals. Thus the conception of the person, Rawls presumes, is one which always prioritizes liberty as the highest order interest. This Rawlsian transcendence from individual particularity (through the constraints of original position) encourages us to imply that liberal values derive from his principles of justice and their corresponding institution are of universalist nature. The contractors in original position (i.e. Archimedean position) were trying to discover universal principles of justice, which could legitimately be applied cross culturally. Rawlsian emphasis on rationality in original position reveals that he wants to identify the rational essence of human being. However the decisive role of veil of ignorance reveals that Rawls appears to be agnostic regarding the functional capacity of universally valid reason. But the problem is that principles of justice can not be considered and proved to be true without accepting the epistemological validity of the universally valid reason. So in order to deny the universality of the principles of justice Rawls has to abandon the idea of universally valid reason.

At this stage one may claim that the conception of the person presumed by Rawls is not universal but culture specific. This sort of self which considers self determination as an end-in-itself has developed (historically) in a particular culture which has emerged as a result of the disintegration of Christian ontological and epistemological accounts during the sixteenth to nineteenth centuries. This non-contestability of the value of non-interference (liberty) is just an intellectual reaction against the practices of the church in the middle and the early modern ages. Thus liberal thought is historically determined and culturally specific.

Another important theme is the Rawlsian effort to reconcile moral subjectivism and objectivism. The individual's ignorance about his own conceptions of the good (in the original position) reveals that the personal conceptions of the good have trivial significance in the constitution of a fair and just socio-political order. The ordering of substantive values is purely a private concern. Thus at the substantive level the conception of the good is a subjective matter. On the other hand the first principle defends equal freedom for all as a highest order interest of the contractors in the original position. Thus the only public good is the "freedom" and the non-contestability of the value of non-interference establishes it as the only objective good. So the crucial issue is how does Rawls contrast the private conceptions of the good to that of the public conception? In order to tackle this issue it must be noted that the Rawlsian introduction to the idea of "deliberative rationality" reveals that the ordering of the private conceptions of the good (although subjective) are not purely arbitrary or irrational. The conditions which are necessary for the operationalization of deliberative rationality are as follows:

- i) The individual knows what he wants.
- ii) He must possess the best possible knowledge and information available about the situation and consequences of pursuing the "chosen plan" of his life.
- iii) He is capable of calculating the relative intensity of his own preferences and desires.
- iv) His order of preferences must be coherent and open ended.

The conditions reveal that the individual pursuit of private goods is subjective but not purely irrational (i.e. non-self interested). This means that the good is a subjective matter, which is, if not always then mostly circumscribed by the objectivity. Rawls believes that at the private level there is a possibility of rational (i.e. self-interested) evaluation of the ends of the individual. Rawls acknowledges that a person's choice will not always be deliberately rational; it is like any other activity. However the significance of the deliberative rationality depends on " the

extent to which one should engage in it, is subject to rational decisions”¹²⁹. Individuals are free to frame and revise their private conceptions of the good but their ends should not contradict or negate the “well- established truth” (by well established-truth he means that the truth which is compatible with the already existing liberal public order)¹³⁰.

Here we find a relation and also a contrast between “good and right”. Since we have already mentioned that deliberative rationality does not provide the ultimate or final plane of life rather it only helps to choose a possibly best choice therefore it is influenced by individual particularities. It is because of this reason that Rawls introduces the constraints of the original position so that whatever might be the details of the good “life-plans” of an individual it does not negate or affect the body of “rights”. This privileged status of the right has been acknowledged by Rawls on the basis of two main reasons: Firstly the “right” has not been derived by arbitrary preferences or desires. It reflects the higher-order interest of the contractors. These rights provide the overarching category in which individuals are left freely to pursue their own (private) conceptions of the good according to their desires, preferences, talents, abilities, social position and natural assets. Secondly the “time preferences” have not been considered as morally significant in the derivation of the principles of justice. Rawls believes that there are certain “rights” (for instances liberty for all, equal opportunity to compete etc.), which are absolute in nature. It is because of this reason that the rationale of the original position does not consider “pure-time-preference”, “just saving principle for society must not then, be affected by pure time preferences, since **before the different temporal position of persons and generation does not justify treating them differently**”¹³¹(emphasis added).

The Rawlsian idea of the state is claimed to be anti-perfectionist. The state deliberately ignores perfectionist ideas which direct individual’s lives i.e. autonomous pursuit of their private conceptions of the good. The Rawlsian state remains neutral regarding the conceptions of good held by the individuals. The

purpose of the state is to provide such a workable framework within which individuals are free to frame, revise, and rationally pursue their own conceptions of the good.

The Rawlsian idea of the veil of ignorance provides a secular framework. In such a framework substantive values have no significance in the establishment of just socio-political arrangement in general and principles of justice in particular. It is important to note that, in Rawlsian political theory the role of the state is neutral. But not in all situations, it protects the system of rights and provides such a mechanism in which private conceptions of good are freely realizable. This implies that the state remain neutral regarding the issue of good but not in the case of right.

In the Rawlsian framework obviously those “ways of life” which contradict or are in conflict with the body of rights are considered as illegitimate and such conceptions of the good and ways of life are suppressible in order to restore the sanctity of the body of fundamental rights. Therefore in the Rawlsian framework there is an open possibility of hierarchy in the substantive conceptions of the good, because in such a state some ways of life are definitely not realizable, as they are in conflict with the prioritized fundamental rights. The Rawlsian conception of state is claimed to be neutral regarding the issue of good but eventually it is not neutral in its effect. Therefore the state necessarily promotes some ways of life and constrains the others. However the nature of the state is basically antiperfectionist because the basis to favour one conception of the good life “does not involve reference to judgments about the relative merits of those different ways of life”. The nature of the state is not determined by the conceptions of the good realizing in a well-ordered society but by the body of rights which is presumed to be neutral by Rawls. Kymlicka believes that the anti-perfectionist state prioritizes a system of rights which is apparently neutral but this system of rights emerges as a constraint in the pursuit of such conceptions of good (which may be chosen by free, autonomous individuals) which are not compatible with that system of rights¹³². The validity of such

rights is claimed to be laid in the epistemological superiority and institutional protection, through the framework of constitutional democracy.

2.3. Justice as fairness in relation to Utilitarianism

‘Justice as fairness’ is very consciously contrasted from classical utilitarianism and intuitionism by Rawls. A superficial understanding of the theory of justice may confuse it with classical utilitarianism and ethical intuitionism. However Rawls believes that justice as fairness is in fact a real alternative “to utilitarianism thought generally and so to all different versions of it”¹³³. He also claims that the contrasts he has provided are valid to differentiate justice as fairness from all variant of utilitarianism.

Rawls believes that the nomenclature of ethical theory is determined by the explication and structural nexus between the notion of “good” and “right”. Teleological approach (i.e. utilitarian or moral intuitionist) is one of the popular ways to explain the relation between right/good. In teleological approach “right” has just an instrumental significance for the realization of “good” which has independently been defined. In this framework the derivation of “good” is independent of “right”. Teleological theory presumes that the common sense or non-moral judgments are intuitively differentiated from the value judgments which rest upon a particular conception of the good. Theory also hypothetically assumes that the socio-political framework must necessarily maximize the “good” which reflects our moral intuitions. In the teleological framework “good” is defined independent of “right”. For instance in the utilitarian perspective the prioritization of ‘pleasure’ as an uncontestable “good” is not dependent on “any standards of right, or what we would normally think of as such”¹³⁴. Rawls believes that (in this teleological framework) the problem arises when the “distribution of goods is also counted as good”¹³⁵. For instance in the utilitarian perspective the maximization of pleasure is not enough, but also the maximization of the pleasure of the greatest number. This means that the core concern is not just the maximization of goodness but also the proper and efficient

distribution of the “good” is equally inevitable for the sustenance of a just order. The organic relationship between the “good” and the distribution of the “good” reveals the inherent contradiction in the teleological approach. He claims that the distributive procedure is determined by the body of rights. Therefore, if the distribution of “good” can only be possible within the rationale of “rights” then the independent derivation of good from an associated system of rights is meaningless.

The satisfaction of rational desires as the fundamental “good” in utilitarianism, assumes the quantification of the pleasure of the greatest number. This shows that this utilitarian strand incorporates an implicit distributive aspect of justice. However the conception of justice rests upon the teleological approach which ironically does not address directly the distribution of utilities among different individuals or social groups. According to Rawls utilitarianism does presume an informal distributive mechanism which is internally regulated by the individual’s order of preference regarding the satisfaction of rational desires. Furthermore utilitarianism also has a criterion of correct and incorrect distribution. According to utilitarian, “the correct distribution... is that which yields the maximum fulfillment”¹³⁶. Unlike utilitarians the prioritization of a particular conception of the “good” (i.e. greatest happiness for greatest number) negates the basic liberties and the realization of fundamental rights. In practical situations any strategy to sustain the liberties of the minority, at the expense of the pleasure of the majority, in principle contradicts the very assumption of utilitarianism (i.e. greatest happiness for greatest numbers). The problem of the utilitarian approach is that it considers society as an organic whole. The utilitarian believes that the “principles of rational choice” (Rational ordering of the preferences of an individual regarding the maximization of satisfaction) is equally practical to judge the order of preference for a society (as a whole) as it is practical in case of individual. The implication of the “principle of Rational choice” over society needs an impartial spectator which is legitimate realm sustaining the impartiality of the Arch-Angle. The impartiality of the Arch-Angle lies in the knowledge of the “ultimate good” i.e. “pleasure”, which provides the

legitimate foundation of socio-political institutions. In the utilitarian framework the role of the Arc-Angel is decisive because in theory the impartial spectator is equipped with the powers of imagination and sympathy and “is the perfectly rational individual who identifies with the experiences the desires of others as if these desires were his own”¹³⁷. The Arc-Angle through this rational and empathetic identification with the experiences of the others provides an organized coherent system of desires equally acceptable for at-least the major group of a society. Thus impartiality of the Arc-Angle, rational ordering of preferences (through the principle of rational choice) and knowledge of an ultimate good (i.e. pleasure) are the theoretical pre-conditions of this approach. It is argued that the claim of impartiality is apparently nullified by the prioritization of a particular conception of good (i.e. pleasure). In response to this objection utilitarians claim that since the most desirable desire is the desire of pleasure therefore it is the only objective good, and is equally true for all.

Social justice in this utilitarian perspective is just a matter of the effective and efficient administration like the administration of commodities. The maximization of satisfaction is the core concern of justice like the maximization of profit through the effective and efficient administration of commodities. Rawls believes that it is because of the prioritization of a particular conception of good and imposition of a particular system of desires on the society as a whole. The “conflating all persons into one through the imaginative acts of the impartial sympathetic spectators” utilitarianism negates individual differences and autonomy¹³⁸.

Unlike utilitarians Rawls believes that we must prioritize individual liberty over social welfare for the sustenance of justice as fairness. The loss of freedom for the realization of general welfare of a society denies justice. Moreover there are certain basic rights and liberties which cannot be overridden even for the general welfare of a society. The prioritization of these rights and liberties is a pre-condition of just socio-political arrangement.

Rawls contrasts justice as fairness from the utilitarian conception of justice. The anticonsequential temperament of justice as fairness distinguishes it from consequential utilitarianism. For Rawls the contractarian theory initially assumes equally free, rational and autonomous contractors. The contract theory accepts the prioritization of a body of rights, which provides a fair mechanism of social cooperation and just order. Further in utilitarian framework the prioritization of a particular conception of “good” (maximization of discounted consumption) mostly overrides the system of the rights and liberties. On the contrary justice as fairness considers the prioritization of any particular conception of “good” as illegitimate and unjust. The precedence of “right” is the essence of justice.

In the utilitarian paradigm, maximization of general welfare becomes the basis of contract, among mutually self-interested individuals. However in “justice as fairness” the “principles of social choice” and the “principles of justice” provide the foundation of contract (original agreement). This means that in the utilitarian perspective a particular conception of good (general welfare) becomes the basis of contract, whereas in justice as fairness, the procedure, itself becomes the basis of contract. Thus the principles of justice themselves become the object of contract. Rawls believes that the prioritization of right over good is necessary for the development of a just social order/cooperation because it is the structure of the body of rights, which allows everybody to pursue his own conceptions of good without interfering in the similar pursuit of others. Justice as fairness is basically a procedural conception of justice, rather than an instrument for the realization of a definite / substantive conception of the good.

Another important contrast between justice as fairness and utilitarianism is that, utilitarianism is a teleological theory whereas justice as fairness is an a-teleological approach. This right-based approach (unlike teleological approach) is anti-consequential. This anti-consequential temperament of right-based approach is the culmination of the precedence of right over good. It is important to note that, although the original position is

a hypothetical choice situation in which every contractor is equally free, rational and self interested (which is the precondition of a fair bargain). Even in this condition the constraints of the original position impose certain restrictions regarding the realization of some particular conceptions of the good. The structure of justice as fairness allows everyone to pursue his own conception of the good subject to the constraint that the only public good is freedom. This implies that the principles of justice presume a criterion to judge which conceptions of good are reasonable and which are not. The legitimacy of the particular conception of good is simply that it must not violate the “principles” of justice derived in the original position.

According to Rawls justice as fairness provides a framework for the development of just social order. The prioritization of right provides a firm and fair ground for socio-political institutions. These institutions resist or rather suppress any individual or social move which contradicts the fundamental principles of justice. The privileged status of this right-based theory is that it provides a fair procedure for the constitution of a just social-order. It provides a theory, which can also successfully be institutionalized in the contemporary socio-political conditions.

Rawls also discusses the relationship between intuitionism and justice as fairness. Rawls acknowledges that particular intuitions provide us the knowledge of the specific aspects of justice for instance, fair wages, fair taxation, fair punishment etc. These specific intuitions provide a criterion to judge the fairness of a particular aspect of justice.

Human intellectual history reveals that the issue of “fairness” remains unsettled among people whenever they question the validity of generalized conception of justice. Traditionally speaking according to Rawls people use intuition as a balancing/instrument to achieve “equilibrium” among the competing criteria of fairness. The epistemological problem with intuitive knowledge is that it is simple and un-analyzable. It is because of this un-analyzability of intuitive “criterion of fairness” that the “balance” (among competing ideal) becomes meaningless, since

in such intuitive criterion the conflating ideals are fused into one. Therefore the prioritization of one competing ideal over the other is not substantively justifiable. So it is impossible to analyze it further. In order to explain this weakness Rawls uses the utilitarian model referring to the two principles being fused together mainly the principle of the maximization of net balance of satisfaction and the principle of equitable distribution of satisfaction.

Rawls considers this fusion as “aggregative-distributive dichotomy” because of two reasons. Firstly, he believes that it is impossible to prioritize one principle over the other and secondly there is no prior rule which justifies the (presumes) inevitable link between the maximization of satisfaction and the distribution of satisfaction (i.e. distribution which maximizes satisfaction over the whole system). The core concern of the utility principle is efficiency (i.e. how to maximize net balance of satisfaction) on the other hand the core concern of distributive principle is the standardization of justice (i.e. how to distribute satisfaction evenly). It is because of these reasons Rawls considers the utilitarian criterion of justice as “intuitionist because no priority rule is provided for determining how these two principles are to be balanced against each other”¹³⁹. Rawls acknowledges that the mathematical expression might describe the validity of “greatest happiness principle” but he claims that there is no moral justification of this reasonableness. The only ultimate criterion utilitarians have is that of “intuition”. Intuitionists believe that since the moral facts are highly complex in nature therefore the plurality of the competing principles can only be balanced by the intuitive faculty of human beings. The only way to refute the intuitionist approach is to provide an ethical criterion which not only sustains the plurality of competing ideals but also provides certain prioritized rules which are necessary to attain a general conception of justice. Thus the derivation and also the approach how to derive the priority rules are the central problems of moral and political philosophy. Traditionally speaking the plurality of the competing principles can only be balanced by “intuition”. For Rawls the “intuitionist conception of justice is ... half a conception”¹⁴⁰. He emphasizes

the need of priority rules for the attainment of a comprehensive conception of justice. Unlike utilitarians he claims that justice as fairness presumes certain priority rules which not only determine the weights of the competing conception of justice but are also rationally explainable. Further the justice as fairness limits the role of intuition in the derivation of a general conception of justice.

Justice as fairness presumes two principles of justice which are chosen in a hypothetical choice situation. Since these principles are chosen therefore they are not self evident (i.e. intuitive). This implies that there are reasonable justifications of their prioritization. However it is important to note that for Rawls the principles of justice do not contradict our moral intuitions. The principles are chosen by equally free, rational and self interested individuals (who are ignorant about their own conceptions of good and social position) therefore the choice is objective and unbiased. The order of the principles derived in the original position is “lexical”. In lexical order the former principle has more weight than the later. Thus lexical ordering presumes an alternative balancing agency other than intuition.

3. Concluding Remarks

This phrasographic overview of liberal thought in general and Rawlsian liberal theory in particular reveals that justice as fairness is an evolutionary form of the works of Locke, Kant and Mill. He only tries to reconcile their work but also tries to eliminate the weaknesses of their thought in a single socio-political framework. He not only revitalizes the theoretical basis of liberal values but he also provides the institutional structure to practices liberal values expounded by Locke, Kant and Mill.

He accepts Lockean constitutionalism and inevitable relation between liberal values and private property economy but he is much more cautious with the problem of distribution (i.e. distribution of primary social good) and considers redistributive function through interventionist state is necessary to sustain liberal public orders. He accepts individual's autonomy which is derived from Kantian categorical imperative and considers

individual as an autonomous law giver. But he recasts Kantian subject through a reasonable touch of empiricism. He is more interested in those characteristics of a citizen (legal subject) which are compatible with the rationale of a workable political procedure, rather than a transcendental subject who is searching for the Kingdom of ends.

He accepts the importance of social cooperation and order which is derived from Mill's work, but he rejects the priority of good over the right (which is defined by Mill). In order to ensure the plurality of incommensurable conceptions of good (pluralism) he institutionalizes the priority of right over the good. In this sense he transcends Locke, Kant and Mill regarding the sustenance of liberal public order and its corresponding institutions.

The prioritization of the right presumes that the higher order interests of the individual are always self-determination and self-interestedness. These are not dependent on the cultural and historical situatedness of an individual. This a-historicity legitimizes the universality of liberalism. On the other hand these rights can never be sacrificed for the sake of the good because the good has trivial significance in the constitution of a just socio-political order. The supremacy of the right over the good is coherent with the rationale of the theory of justice. The lexical priority of the value of non-interference is objectively endorsed by universally valid reason¹⁴¹. This means that Rawls cannot reject the priority of right over the good as a universalist claims without abandoning his idea of universally valid reason.

On the other hand equality of substantive values is also sustained due to this prioritization of the right over the good. Rawls acknowledges that in the public sphere there is no fixed, objective and legitimate instrument which makes an order of substantive values possible. The ordering of the substantive values is purely a private concern. In theory there is no hierarchy among different conceptions of the good. If there is any distinction among different substantive values, it must only be legitimately categorized on the basis of the higher universal

order interest, Rawls considers value of non-interference as a non-contestable good (a-prior).

It is obvious that the value of non-interference has priority over substantive values. This reveals that the Rawlsian claim regarding the equality of the private conceptions of the good is actually fictitious. Every society presumes and order among different values. This hierarchical set up is in fact the manifestation of the prevailing public conception of the good of that society. Since in liberal social order the only public good is individual's freedom therefore those substantive (private) values which are organically related to that public order have more worth than those which are in conflict with this good.

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- ⁵ Ibid, pXXXV
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- ⁷ Hall J.A. *Liberalism: politics, ideology and the market* (ed) by Justin Wintle. Paladin Grafton books London 1988 p. 35
- ⁸ Ibid, p. 35
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- ¹⁰ In order to define liberalism we are using the core heading which are identified by Hall see Ibid p. 35-38.
- ¹¹ Ibid p. 37-44
- ¹² Ibid p. 37
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- ¹⁶ Locke John. *Two treatises of Government*, (ed) with Peter Laslett, Cambridge, Cambridge University Press 1960 page 58
- ¹⁷ Ibid page 280
- ¹⁸ Ibid page 280
- ¹⁹ The legitimacy of the system of right/duties was defended by Locke on the basis of natural law and Christian ethics. However the prioritization of rights for the constitution of a just socio-political order was an approach adopted by Locke which has later on modified and refined by Mill and then Rawls.
- ²⁰ Ibid page 324
- ²¹ These features are refined and theoretically developed by Rawls in his procedural conception of justice.
- ²² Ibid page 288
- ²³ Ibid page 287-8

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- ²⁴ However the history of liberal thought reveals that the impact of his religious morality is inversely proportional to progress and the maturity of liberal political theory.
- ²⁵ Ibid page 291
- ²⁶ Ibid page 304
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- ³⁰ It implies from the above quotation that Lockean conception of state is basically anti-perfectionist as far as the issue of religion and individual conception of good are concerned. In his conception of tolerance he has provided the perfect basis of secular political framework. Locke John, A letter concerning toleration in John Locke on Politics and Education ed. Howard R. Penniman (New York. Van Nostrand company, 1947) in John Arthur, Social and Political Philosophy (ed). New York. Prentice Hall Englewood cliff. 1992 page 205.
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CHAPTER – IV

Rawls in Relation to Liberal-Communitarians

This chapter deals with the liberal communitarian critique on Rawls. We will try to excavate the inherent contradictions in Rawlsian liberal account through liberal communitarian perspective. The communitarians we will discuss are basically liberals. They accept the superiority of liberal values which are defended by Rawls but they disagree with the approach he has adopted.

The communitarians are critical about the Rawlsian universalist defence of liberalism. They are also not satisfied with Rawlsian conception of self, which is claimed to be antecedently individuated. This unencumbered self justifies the priority of individual over his community. The precedence of self over its community trivializes the significance of “good” in the derivation of a system of rights. Thereby it justifies the priority of right over good. The communitarian liberals have rejected Rawlsian universalist argument in favour of cultural and historical specificity. However this does not imply that they reject liberal values. They acknowledge that Rawls represents the common Western presumption about the supremacy or priority of liberty and considers liberalism as a genuine moral tradition. But they believe that liberal principles are not abstract or universally valid rather they are historically specific. They endorse individualism on communitarian grounds and do not articulate non-liberal politics.

This chapter has been divided into two sections. The first section deals with the communitarian critique of Rawls’ conception of the person, the problem of the reconciliation of moral subjectivism/objectivism regarding the conception of good and the issue of universalism/particularism. The second section deals with the communitarian relationship with Rawls. In this section we have tried to identify the differences based on similarities between Rawls and Liberal-Communitarians.

SECTION I

1. The Communitarian Critique of Rawls

The communitarians' critique on Rawls's theory of justice is very revealing to understand the origin and development of Western moral and political thought. They criticize Rawls on the grounds of his incoherent conception of self and his skepticism about the objectivity on moral grounds. According to them he ignores the importance of community in the constitution of the individual's identity. They are also unsatisfied with the Rawlsian antecedently individuated self and consider his neutral conception of person as fictitious.

The communitarians believe that the contemporary Western moral/political culture is in a state of intellectual confusion. The unavailability of an objective and moral basis of liberal democratic culture is the root cause of that confusion. The communitarians believe that liberalism does not provide any objective basis for the evaluation of different conceptions of good. The liberal commitment with the prioritization of right (which is independently derived from any objective general good) trivializes the importance of good and consequently that of community. The ordering of good simply becomes a matter of concatenation. The choice of the substantive conception of the good cannot be justified by one person to another or even to himself. Moral debate must be irrational because of the aestheticization of good. Because of the trivial significance of the good, and the prioritization of the right over the good, moral judgments are merely the expressions of personal preferences. In such an emotive discourse, language merely conceals the ultimate and apparent irrationality in liberal political thought. Liberal communitarians claim that Rawlsian liberal argument is basically rhetoric because of the aestheticization of good.

The priority of the right over the good is the foundation stone for the theory of justice. This presumption justifies the claim regarding the neutrality among competing conceptions of the good. The communitarians are not satisfied with this priority of the right over the good, and believe that the prioritization of the right over the good undermines the role of community in the

constitution of individual's selfhood and trivializes the significance of good in the determination of a body of rights. Unlike Rawls the communitarians claim that the rights are derived from the good therefore the good has precedence over right in communitarian framework. The role of community in the determination of good and the derivation of rights is central according to them. They believe that the good is historically determined and culturally specific therefore the good is always derived from cultural history of a particular community. So, the communitarian perspective prioritizes community over individuals.

Rawlsian conception of person (which we tried to conceptualize in our previous chapter) is central to sustain the liberal public order and the prioritization of right over the good. The general characteristics of Rawlsian conception of self are as follows:

- (1) The conception of self is antecedently individuated.
- (2) The good has trivial significance in the derivation of the principles of justice.
- (3) These liberal principles presume a universally valid reason.
- (4) Since the self is basically unencumbered, there are no objective grounds for self-interpretation and moral growth.
- (5) The most important among all, the right has precedence over good.

This right-based liberal version “is grounded in the conception of a subject given prior to its end, a concept held indispensable to our understanding ourselves as freely choosing, autonomous beings”¹. This priority of self over its ends actually reflects the “essential unity of the self (which) is already provided by the conception of right”². The detachment of the self from its ends and its autonomy are in fact the moral propensity of right-based liberalism. This liberal version not only ignores the significance of the good, end or virtue in the constitution of self identity it also rejects the historical specificity of the good and its role in the development of individual's self-hood. This liberal version

presumes that free and autonomous expression of will “is most fundamental to the dignity and worth of human beings....[it] elevates them above the realm of causally determined nature”³.

The Rawlsian subject is not identified by his preferences, aims and objectives, rather he is identified “by the capacity to think and act autonomously”⁴. Sandel, one of Rawls’ major disagrees with this Rawlsian approach. He claims that Rawls recasts Kantian subject with a reasonable touch of empiricism but the formal element (in this right-based liberal version) has not completely been eliminated due to the a-historical and a-cultural nature of subject⁵. Theoretically speaking there is no role for history and culture in the derivation of the first-order ethical principles. The principles of justice have been derived by the universally valid reason and can legitimately be applied cross-culturally. In this right-based liberalism there is no theoretical instrument which makes possible the objective ordering of the individual’s preferences so there is no possibility of self-interpretation and moral growth. The unencumbency of the self is in itself considered to be the end in itself. The identity of this self is that it has not objectively been identified by anything other than itself, “...my values and ends do not define one’s identity. Further one must regard oneself as the bearer of a self distinct from one’s values and ends whatever they may be”⁶.

The over-arching category which legitimizes all these aspects of Rawlsianism is the priority of the right over the good. It endorses the institutional guarantee of equal freedom for all, which sustains the equality of all substantive goods. Thus the priority of right is the precondition and unqualified moral primacy for the derivation of fair principles of justice. Since Rawls believes that if the principles of justice are derived on the basis of any particular conception of the good (for instance, maximization of social welfare, maximization of discounted consumption etc.) then this particularity of the good leads to consequentialism. The implementation of any particular conception of good through state structure eventually restricts individual’s freedom. Thereby violates individual’s fundamental right of self-determination. The prioritization of the right in general and principles of justice

in particular eliminate the possibility of the “coercive imposition of one’s conception of the good upon persons who might hold differing conceptions of the good”⁷. Thus it ensures the freedom of each.

Sandel rejects this Rawlsian right-based liberalism because it presumes an incoherent conception of self which eventually limits the scope of justice. He conceives the priority of the right over the good as the limit of justice, and same sort of sentiments have been shared by MacIntyre and Taylor with him.

The Liberal-Communitarian critique of Rawls is basically three dimensional:

- (a) The role of community in the constitution of the self.
- (b) The illegitimacy of the detachment of self from its ends and history.
- (c) Possibility of moral growth, and the prioritization of the good over the right.

The human self is not to be treated as the object of scientific study. According to Taylor, man is a self-interpreting animal and there is no possibility of having an abstract realm which transcends historical specificity and the particularity of a linguistic community. The self-interpreting capacity of the individual is the defining characteristic of human beings. In this regard human being are considered to be “creatures whose identity as persons depends upon their orientation and attachment to the conceptions of the good which they derive from the matrix for their linguistic community”⁸. This means that the constitution of the individual’s identity depends upon the orientation and attachment derived from the social matrix of a particular linguistic community. The self is embedded in a particular community and answers the questions which have emerged and are organically related to the ontological basis of that community. The Rawlsian self is antecedently individuated and independent of history and culture. Because of this a-historical temper self-interpretation is ontologically not possible within the Rawlsian framework. Taylor emphasizes that self-interpretation is the defining characteristic of a human being but

this self-interpretation is made possible by a bounded rationality, the rationality derived from the social matrix of a particular language community. Taylor believes that the unencumberedness of the self is not possible because historical specificity is inescapable. The self is ontologically incapable of escaping from the linguistic/moral space in which it has been situated. "To understand our predicament in terms of finding or losing orientation in moral space is to take the space which our framework seeks to define as ontologically basic"⁹. The moral space in which the self is interpreting itself exists independently irrespective of the fact whether it is considered as legitimate for moral evaluation or not. The natural corollary of this is that the community exists independently and is ontologically prior to the individual self. Taylor has claimed that finding one's bearings is something one does in a space that exists independently both of one and one's success or failure in orienting oneself within it¹⁰.

Taylor's distinction between moral intuitions and instinctual intuitions is also very crucial in determining the role of community in the constitution of self identity. The rational elucidation or articulation of moral intuitions is possible on the basis of participation in a particular linguistic community only. "[The] moral judgments and intuitions are essentially capable of rational elucidation or articulation, a process that requires the invocation of fundamental and wide ranging evaluative frameworks also deriving from the community"¹¹. So the community is a structural precondition for the constitution of a moral self. On the other hand the articulation of moral intuitions has linguistic predication. That is to say the articulation is possible in a linguistic matrix in which the self has been situated. The meaning of moral intuitions has not been derived at an Archimedean position rather it is contextually determined. This context is actually derived from certain metaethical narratives which are ontologically grounded in a particular kind of historical specificity. The natural corollary of this metaphysical presumption is that man is condemned to interpret himself subject to the constraint that the space of this self-interpretation is not being determined by the individual moreover "there is no

such thing as the structure of meaning for him independently of this interpretation of him for one is woven into the other¹².

The self is situated in hermeneutical sphere of meaning and there is no possibility of transcendence from hermeneutical activity. It essentially negates the possibility of an archimedian standpoint. This means that the community is the theoretical precondition for the derivation of meaning by a self, because it provides the content of interpretation. There is a possibility of more than one interpretation, in a given community and every interpretation is authentic because it is the manifestation of the linguistic matrix in which the self has been situated. Further “the relationship between a person’s inner life and the vocabulary available to him for characterizing or interpreting it is an intimate one”¹³. Despite this fact that every interpretation is just an interpretation, it is bounded by the experience (in a wider sense), which the self has had as a participant in the linguistic community which legitimately constitutes its self-identity. This means that there is no final meaning. Meaning is necessarily derived from the interpretations. The content of these interpretations are provided by the language and history of a community which is in a state of evolution.

It is important to note that interpretation by definition does not provide fixed meanings. In order to reach meaning we do not have any instrument other than interpretation. But there is a possibility to objectively evaluate and order these interpretations on the basis of the metaethical narrative, which provide the substance of rationality and are by themselves suprarational. For instance, liberalism, communism, socialism, social welfarism, democracy, popular democracy etc. are all different interpretations which claim to objectify the metaethical narrative which emerged during the particular course of European history. In this way Taylor rejects the antecedently individuated self and asserts that it is not possible to derive abstract principles which are universally applicable. Since he presumes community as the ontological precondition for the constitution of the self, inter-subjective discourse is necessary for the constitution of selfhood. Taylor rejects the possibility of the existence of an isolated self

rather it is a “self only in relation to certain interlocutors”¹⁴. Self-interpretation is possible in the linguistic matrix which is prior to the self. The individual is free to interpret but the medium is not derived from the self. This means that the derivation of meaning is a communal phenomena. In a more precise sense, goods or ends are communally derived by the self in relation to different interlocutors. Taylor says “in relation to those conversation partners who were essential to my achieving self-definition [and] in relation to those who are now crucial to my continuing grasp of language of the self understanding”¹⁵.

The self always has a virtue which legitimizes its meaningful existence in the hermeneutical sphere which provides the grounds for the culmination of intersubjective consensus, in Taylor’s words, the self always finds itself in a “web of interlocutors”¹⁶.

Sandel’s perspective is slightly different in this regard. He thinks that Rawls claims that the conception of justice he presumes is political and the person is an autonomous chooser of ends, because this autonomous “capacity must be given prior to its exercise, the locus of moral worth in human beings must be seen as given prior to its ends”¹⁷. This priority of the self over its ends actually reflects the “essential unity of the self (which) is already provided by the conception of right”¹⁸.

Sandel believes that the conception of antecedently individuated self presumed by Rawls is metaphysical (i.e. implying a specific ontology). The autonomy of the self is not only a potentiality “rather it forms the essence of his or her identity”¹⁹. It is one of the reason that the value of non-interference which justifies this autonomy of the self has lexical priority over other substantive values. In this regard “the self is prior to the ends which are affirmed by it”; even a dominant end must be chosen from among numerous possibilities. There is no way to get beyond deliberative rationality. We should therefore reverse the relation between the right and the good proposed by teleological doctrines and view the right as prior”²⁰. The objective priority of the value of non-interference is the manifestation of a particular

kind of metaphysical conception of personhood. It implies that “a self for whom justice has absolute priority over other values is a self whose bounds are absolutely prior to its choice of ends”²¹. Sandel claims that the original position provides legitimate room to sustain the metaphysical picture of Rawlsian antecedently individuated self. The contractors in the original position have some preconceived notion about the society they ought to construct. For instance the contractarian foundation is considered to be the only legitimate grounding for all social relations. Equally autonomous individuals are engaged in social relations for the pursuit of their own personal benefits. This social cooperation is necessary for the realization of their specific goods. Rawls clearly acknowledges that “individuals in the original position are mutually disinterested”²².

Rawls in his contractarian theory presumes two metaphysical presumptions as follows:

- (a) Individuals are distinct persons.
- (b) Pluralism (social order which presumes equality of incommensurable conceptions of good).

Rawls' conception of a well-ordered society presumes distinct persons who cooperate each other in a pluralistic social matrix. So “the plurality of distinct person with separate system of ends is an essential feature of human societies”²³. The priority of the right serves two purpose simultaneously; firstly, it ensures the autonomy of separate individuals and secondly it ensures the possibility for the realization of incommensurable conceptions of good. According to Rawls, “metaphysically speaking, we are distinct individuals first and only later do we form relationships with others and engage in cooperative activity; so those relationships cannot be integral to our constitution as selves”²⁴.

Sandel believes that this Rawlsian conception of justice is socially constructed. Rawls presumes a social matrix as the precondition for the constitution of the system of cooperation. If we accept this Rawlsian claim then the social force (community) had already constituted individuals when they were engaging in contract for the pursuit of their own benefits. This implies that “the plurality of persons is prior to their unity”²⁵. Since the

community is the ontological pre-condition of individual's self-hood therefore the conditions of social unity and cooperation presume the communal attachments which are ontologically inescapable. The natural corollary of this prioritization is that person is neither antecedently individuated nor independent of the social matrix or history of the community while individuals "are essentially constituted as selves in advance of any such engagement with other"²⁶.

Sandel believes that Rawlsian consideration of self-interestedness as the only legitimate motivating force for the social contract is not only an assumption rather it is a metaphysical condition which is necessary for the derivation of two principles of justice. In other words the condition of self-interestedness is necessary for the realization of the constraints of original position. Rawls believes that autonomy and equality of opportunities are not only the interests of the self rather "they are the interests of a self that regards its conception of good as worthy of recognition and that advances claims in its behalf as deserving satisfaction"²⁷.

Rawlsian self is not identified by its ends, views and virtues but it is antecedently individuated. The possession of interests are independent of its ends and "they are the interests of a self in the sense that they are merely possessed by (it) self"²⁸. The rationale of the original position reveals that being rational means being self interested. For instance contractors in the original position act rationally if they know what they want, and try to maximize their possible preferences subject to the constraint of risk aversion. So there is an equation of rationality and self-interestedness which makes the derivation of the "difference principle" possible among mutually disinterested individuals. It means that the rationale or the constraints of original position compel contractors to accept the "difference principle" as a rational and fair principle of justice. Thus being self-interested individuals the contractors maximize their opportunities in the worst condition and minimize the cost of being in that worst condition.

The legitimate detachment of the self from the ends reveals the ontological incapacity of the Rawlsian conception of the person to grasp the nexus between the individuals and their ends to which they are committed. This ontological impediment reveals an inevitable epistemological deficiency that there is always a dichotomy between the subject and the object, self and its ends. The corollary of this dichotomy between subject and object is that “the self beyond the reach of experience, to make it invulnerable, to fix its identity once for all”²⁹. This unencumbency of the self reveals its ontological capacity to change, revise and frame ends and conceptions of good. In short the unencumbency of self justifies the free choice of ends and virtues.

Sandel considers this detachment as illegitimate and fictitious. He believes that the determination of ends and virtues is not a matter of choosing among given preferences. The normative status of ends must be excavated or discovered, in other words, one’s “fundamental preferences in morality as well as politics, would surely be for the conditions of self-knowledge rather than the conditions of choices”³⁰. Moreover this Rawlsian rejection of a fixed identity for the sustenance of liberty rejects the possibility of intra-subjective understanding. The Rawlsian antecedently individuated self “rules out the possibility of what we might call ‘intersubjective’ or ‘intrasubjective’ forms of self-understanding, ways of conceiving the subject that do not assume its bounds to be given in advance”³¹. Thus it rules out the possibility of objective evaluation of moral discourse and morality becomes a matter of subjective expression. The issues of self, ends and rights are also analyzed by MacIntyre but in a different perspective.

MacIntyre believes that it is partially true that the use of language in contemporary moral culture is overwhelmingly emotivistic but it is not true that moral utterances are essentially emotivistic. He thinks that moral evaluation must have rational context. Modern culture is emotivistic precisely in the sense that moral discourse is no longer rational. In the Rawlsian system moral discourse is concerned only to alter preferences and

feelings of those you address. The Rawlsian unencumbered self abandons the possibility of genuinely impersonal, objective and moral criterion for altering opinions. This makes it impossible to treat persons as ends within the Rawlsian system. MacIntyre believes that in Rawlsian framework there is no rational criterion to order different substantive goods. The Rawlsian self is not capable of interpreting itself, so there is no ontologically grounded and metaphysically backed instrument to order different substantive goods. Thus the moral evaluation is logically not possible in the Rawlsian system. It means that you and I do not mutually arrive at moral conclusion that can be shown to be true in some objective sense. I merely influence or dominate you to accept my moral position by altering your emotions.

The Rawlsian antecedently individuated self is not being identified with its moral viewpoint. Such a self has no character, no foundation and is unencumbered. Its moral judgments are ultimately arbitrary and purely personal. Whatever I have chosen is worthwhile in that its value lies in the sense that I have freely chosen it. The Rawlsian person stands outside history and there can be no such thing as moral personal development.

Rawls does not succeed to distinguish between human nature in itself and its true potential, because of the ignorance of the “vital distinction between man-as-he-happens-to-be and man-as-he-could-be-if-he-realized-his-essential-nature”³². MacIntyre believes that people like Kant, Kierkegaard, Smith etc. have failed to provide a substantive ground for the realization of human potential, which is inevitable for moral and spiritual development of the individual. It is one of the reasons that “the eighteenth century moral philosophers engaged in what was an inevitably unsuccessful project”³³.

According to MacIntyre the purpose of ethics is to help human beings realize their potential. The Rawlsian right-based-liberalism is devoid of telos (purpose/potential) and because of this axiological deficiency Rawls can not justify morality per-se. MacIntyre believes that human telos is “vital to morality, understood as a rationally justifiable or objective enterprise,

because it alone can license immediate transitions from “is” to “ought”³⁴. This means that without identifying a “telos”, existing character traits cannot be identified as good/bad. In a nutshell without “telos” there can be no ground for morality. MacIntyre is presuming an Aristotelian framework for the objective moral evaluation of human conducts. In such a framework telos is considered as a theoretical instrument which provides the basis for judging existing character and is grounded in the culture and history of a civilization.

The Rawlsian self is devoid of any virtue. The attainment of one’s own conception of good is in itself vitreous in Rawlsian well-ordered society. The only public good is freedom so that the individual can frame, revise and rationally pursue his own conception of the good. The priority of the right over the good eliminates the possibility of the pursuit of any generalized conception of good other than liberty. MacIntyre believes that internal substantive values are evolved by consociational human endeavors. These internal goods cannot be realized or achieved without engaging in practice. By practice he means “any coherent and complex form of socially established cooperative human activity through which goods internal to that form of activity are realized in the course of trying to achieve those standards of excellence which are appropriate to and partially definitive of, that form of activity, with the result that human powers to achieve excellence and human conception of the ends and goods involved, are systematically extended”³⁵. This means that virtue by definition is communally determined. It can objectively be acquired by participation in practices and acquirement of internal goods which are specific to these practices. But participation in a practice requires that I subjugate my preferences/attitudes to the communal standards and authorities that currently define a practice. The standards of the practices define the limits of criticism. The practice can only be criticized on the basis of the criterion that the practice itself recognizes. Moreover practices can only be criticized by the participants. Thus the judgment about the practices cannot be regarded as purely subjective or arbitrary in other words moral judgments are not of emotive nature.

Participation is intrinsically a shared project based on communally and historically determined standards. It creates a valuable form of life which has objective grounds to differentiate between meaningful and meaningless forms of life. There can be many practices with different internal goods and evaluations within them. These practices can be based on norms/ procedures inherent in them. But there is no basis for objectively evaluating one practice against another. Thus objective moral evaluation is possible and it can only be possible within a culturally specific paradigm. Thus MacIntyre rejects the Rawlsian universalist claim regarding the authenticity and legitimacy of the principles of justice. MacIntyre believes that “participation in such shared projects, acceptance of such communally and historically determined standards initiate the individual into forms of life in which human judgments of worth are immune to the threat of emotivism”³⁶. This means that the meaning of any event can be grasped by relating it to the history of the performer’s life and contextuality of the act which is being performed. In a nutshell “being/life is lived historically”. Life is lived both in response to (unpredictable/arbitrary) developments and teleologically struggle to achieve some purposes. It implies that the particular history of individual determines the purpose of his life. For instance when I am confronted with the question, shall I be a chess player or a father? I can only prefer one practice over another on the basis of what is more consistent with the history of my life (in a particular cultural context). Since in the Rawlsian framework the person is standing outside history therefore on the one hand there can be no such thing as moral personal development and on the other hand he is incapable (ontologically) of pursuing an objectively determined purpose.

The incompatibility between the priority of right (over good) and the possibility of moral growth is explored by liberal communitarians. Communitarians in general and Taylor and MacIntyre in particular believe that conceptions of the good have been derived by the evaluation of moral intuitions namely “strong evaluations”. By strong evaluation Taylor means “discriminations of right and wrong in terms of standards that are independent of our desires and preferences and that allow us to

evaluate their worth”³⁷. The strong evaluation is in one sense rational and on the other hand aesthetical, rational in the sense that the evaluation of the moral intuitions takes place within a social matrix of a particular linguistic community with a specific concept of the “rational”. It is possible to rationally order and determine the worth of different competing conceptions of the good on the basis of its coherence with the metaethical narrative. These supra-rational, metaethical rational narratives provide the substance of rational ordering in a specific community; they have emerged from the history of a particular community. Therefore there is no possibility of rational ordering of the conceptions of good among two different communities. In this context the objectively rational ordering of the conceptions of the good is possible within an intra-communal paradigm and aesthetical in the context of the extra-communal sphere. In a nutshell the preferences of one language community cannot be rationally contrasted by that of an other community. This incommensurability is due to the experiential differences of the historical experience of one community to that of an other. Thus moral growth is possible within a particular civilization. Since it is possible to differentiate between people on the basis of the reflection in their moral life of the “ontological truths” which are considered to be valid in that civilization.

Taylor pointed out that every individual has many conceptions of the good in his life, and sometimes these conceptions are in conflict with each other. So there is a need for a rational reordering of these conceptions of the good. This hierarchical categorization of different conceptions is possible on the basis of a good which is relatively superior to others. Qualitatively higher-order goods are called “hyper-goods”. This reordering of goods is not a subjective phenomena, it has an objective basis, which is ontologically backed and historically grounded. The communitarians rejection of moral subjectivism in general and the notion of the unencumbered self in particular is based on their presumption that without having ontologically grounded conception of good it is not possible to derive abstract principles of justice. Taylor believes that individual’s self identity, his conceptions of good and historical specificity are all

ontologically linked with each other. Thereby he claims that the hyper goods “usually arise through a historical suppression of earlier (conceptions of good)”³⁸. This means that the hypergoods endorse the justification of hierarchy among different conceptions of the good. This reordering of the good is not the manifestation of emotivist or subjective inference of personal preferences and desires. This transvaluation is based on practical reason. Taylor believes that “practical reasoning...is a reasoning in transitions. It aims to establish, not that same position is correct absolutely but rather that same position is superior to some other”³⁹. The contestability of interpretations on the basis of metaethical narratives makes it possible to realize a way of life in which “we have lived a transition which we understand as error-reducing and hence as epistemic gain”⁴⁰. This makes objective transvaluation possible by practical reasoning. Thus we find a reconciliation of relativism and objectivism in a moral context, relativistic in the sense that there is a legitimate transformation among different conceptions of the good and objective in the sense that the contestability among different conceptions of the good is based on practical reasoning specific to a history / culture. This reconciliation eventually negates moral subjectivism and universalism. The rejection of universalism culminates in the legitimate transition in practical reasoning. The natural corollary of this transition is that the derivation of a-historical abstract principles of justice is not possible. This rejection is the rejection of Archimedean position or Rawlsian original position, the paradigm which makes the operation of external reason possible. It implies that the contestability of interpretations among different conceptions of the good is only meaningful within a historically specific linguistic community. This means that transvaluation of hyper-good is possible due to the participation in a linguistic matrix of a community which is prior to the individual. The conception of hypergood negates the neutrality of the good because “they present us with a good which challenges and displaces others”⁴¹. This is one of the reasons that hypergoods are considered as a source of conflict “they presuppose an ultimate intolerance of the other goods to which they assign lower rank”⁴². This intolerance has an epistemological basis which justifies “moral growth” “A

hypergood involves our changing, a change which is qualified as 'growth', or 'satisfaction' or 'higher consciousness' and even involves one repudiating earlier goods"⁴³. Thus we find a rejection of emotivism and justification of objective relativism because the repudiation of one good in favor of the other has historically specific and ontologically grounded objective justification. Since the hypergoods "have usually arisen through a historical suppression of earlier, less adequate views; they present themselves as steps to a higher moral consciousness"⁴⁴. Thus the conception of the hypergood legitimizes "moral growth" which is not possible in the Rawlsian framework and rejects simultaneously the moral subjectivism which prevails in Rawlsian account.

We can summarize our discussion as follows:

- (i) The conception of the self presumed by the liberal-communitarian is actually the rejection of any political theory which presumes an antecedently individuated or unencumbered self which is independent of history and transcendental to the linguistic community.
- (ii) The community is considered to be the structural pre-condition for the constitution of the self as unity which contradicts the fundamental assumption (i.e. possibility of antecedently individuated self) of a-social individualism.
- (iii) The identity of the self is organically related to the pursuit and the commitment towards the good or end. This means that there are ontologically grounded objective basis for moral evaluations (strong evaluations) among different conceptions of the good, so there is a rejection of emotivism and moral subjectivism.
- (iv) The derivation of the abstract principles of justice has been rejected because of the abandonment of the universally valid reason.

Section – II

2. Communitarian Relationship with Rawls

The Rawlsian commitment to the conception of the unencumbered self, the trivial significance of the conception of the good in the constitution of self identity and the priority of the individual over his community justify communitarians reservations against him. However it is important to note that the conclusions these liberal communitarians have deduced about a just socio-political order are not very different from that of Rawls. There is no such thing as non-liberal politics emerging out of Sandel, MacIntyre and Taylor. The issue which differentiates them from Rawls is the issue of the universality or particularity of liberal values and their corresponding institutions. They provide a communitarian rationale for a-social individualism (at the moral level) and pluralism (at the political level). They believe that liberal principles are not abstract or universally valid but historically specific. Since the liberal values have been practiced in a particular course of history therefore they believe that the Rawlsian claim about the neutrality of the principles of justice is fictitious. In a nutshell they endorse liberal arguments on communitarian grounds rather than on the basis of a universalist ideology. In this section we are going to excavate the commonalities between Rawls and liberal-communitarians.

Rawls claims that the abstract principles of justice and their corresponding institutions do not affect in any way the individual's conception of the good and its realization. Justice as fairness provides a framework in which freedom of conscience is sustainable. Although these principles of justice have not been derived from history they are compatible to the moral intuitions of atleast western liberal democracies. Justice as fairness provides an over-riding framework in which the individual's private conceptions of the good are not only sustainable but also realizable subject to the constraint that it does not negate the will to freedom as the only public good.

Taylor claims that these principles of justice are compatible to our own moral intuitions because these principles are historically specific, for instance the liberal principles are not compatible to

Christianity⁴⁵. This means that the prioritization of liberty is the manifestation of a particular kind of historical consciousness which has culminated in the history of a particular linguistic community. The prioritization of the right over the good has been accepted by Taylor in its historical specificity. He believes that the prioritization of the right promotes a particular conception of good which has emerged in Europe, in retaliation against ecclesiastical hegemony during a particular course of history. Taylor rejects the priority of right because it is the good which provides the paradigm in which rules of rights are meaningful. The right has been defined in a particular sphere of good which has been communally derived. In this relation “the good is always primary to the right....the good is what in its articulation, gives point to the rules which define the right”⁴⁶.

The communitarians believe that liberalism proves itself highly illiberal regarding the question of right. Since in communitarian perspective rights are necessarily derived from the good therefore they believe that liberal claim of the neutrality of the body of rights is actually fictitious. In right-based-liberal framework the good and the right have been contrasted on the basis of private and public sphere. The significance of good lies in the private sphere because, according to the right-based liberals (like Rawls) we don't have any criterion to order different conceptions of the good in public sphere. Since individuals differ in their conceptions of the good, therefore it is necessary for the state to equally respect all conceptions of the good and remain neutral as far as the matter of the good is concerned. However the ‘right’ is the realm of public and it provides the framework to treat individuals equal before law. That is why Rawls considers right and justice as synonymous. We can contrast his conception of good/right on the basis of individual's relation with himself (i.e. private and this is the sphere of the good) and the others (i.e. public and this is the realm of right)

The rational and autonomous individuals are free to make their own choices and this has been institutionalized by the body of rights. This distinction between the good and the right reveals two theoretical presumptions of right-based liberal theory in

general and that of Rawls in particular. Every conception of good has equal status (irrespective of its consequences) and every body has equal right to pursue his own conception of good (subject to the constraint that the only public good is the will to equal freedom). This means that “the kind of neutrality...is neutrality not with respect to the questions of the right or of justice, but with respect to the question of the good”⁴⁷. Theoretical speaking it is necessary not to be neutral with regard to the question of the right because it is the right which sustains the equal respect of all the conceptions of the good. “[T]he neutral state which protects the right of its citizens to pursue their own conceptions of the good, obviously is not neutral between the religious fundamentalist and the secular liberal”⁴⁸. That is why Taylor considers this prioritization of the right as the “hypergood” for Rawls. Hypergood are qualitatively higher-order goods. According to Taylor the hypergood by definition presume an intolerance of the good which they consider lower rank. MacIntyre uses the term internal-good in almost the same sense. Taylor and MacIntyre both believe that this hyper or internal good provides a criterion to judge and evaluate particular practices in a particular social matrix. This reveals an internal contradiction in Rawlsian work. It claims that everybody has an equal right to pursue his own conception of the good but in practice only those conceptions of the good are realizable and also worthy which are organically related to liberal public order and liberal rights.

Generally the ordering of the individual’s preferences and desires are three dimensional:

- (a) What sort of relations with others emerge on the basis of the order of preferences.
- (b) How far this order of preferences is compatible with the pre-conceived notion of good for human being in general.
- (c) On the basis of this order of preferences how do other members of the community merit my dignity and worth.

This means that the private conception of the good is determined by the public conceptions of the good (liberty). That is why, in a

liberal society, any private conception of the good which is not organically related to the public conception of the good (value of non-interference or toleration), is very difficult to realize and ultimately people are forced to be free by the state. The liberal will not remain neutral with respect to the question of right. Because it is the public conception of the good which sustains, produces, reproduces and is conducive to the realization of a specifically liberal private conception of the good. "If some ways of life cannot survive in a (liberal) society in which everybody has what justice demands, and without perfectionist political action on their behalf, then that is unfortunate for those who favour such ways of life but no reason for the state to help them. Rather they will have to revise their conception of the good to fit the constraints imposed by the priority of the right"⁴⁹. The natural corollary of the dominance of the (liberal) public conception of the good (equal freedom) compels the individual to accept this as a private good. The liberal distinction between the public and private spheres is actually fictitious. The rights-based liberalism in practice contradicts what it claims in theory. In actuality the private conception of the good is intrinsically and inevitably related to the public conception of the good i.e. (equal freedom). **This is one of the reasons why communitarians do not consider right-based liberalism in general and Rawlsian work in particular as genuinely deontological.** Taylor believes that the structure of the original position is ontologically determined and historically specific. It has been designed to promote a particular conception of the good (which is both public and private). The principles of justice are not derived by the people who are detached from their ends and virtues. The rationale of the original position is designed by Rawls as it becomes "necessary for the maintenance of certain substantive goods in particular, as reflecting our concern to respect the freedom and equality of all citizens"⁵⁰. The principles of justice are not universally valid rather they are culturally specific. The constraints (in the original position) provided by Rawls are appropriate for the realization of ends and virtues which are ontologically coherent to the historical experiences of a particular (i.e. Enlightenment) civilization.

There are two crucial disagreements among Rawls and liberal-communitarians. Communitarian-liberals reject universalism and endorse particularism. They believe that a culturally neutral perspective is not possible. Where as it is impossible for a liberal to remain neutral on the question of liberty. Taylor considers liberty as the most important “hypergood” rather than a universal good, “Taylor is happy to admit that the liberal hypergood is one that has many attractions”⁵¹. MacIntyre conceives Rawls’s original position not just as an attempt to model a-social individualism but regards it as a legitimate effort to represent the common Western assumption about the primacy of liberty. For instance Taylor’s definition of the individual, as a self-interpreting animal, is quite compatible with that of Rawlsian political institutions because “an animal could only be an autonomous chooser of ends in a society whose institutions and culture embodied and presupposed a conception of persons as autonomous choosers of ends”⁵². In this sense Taylor provides a communitarian justification of (Rawlsian) a-social individualism because “the institutions and practices of modern liberal democratic societies...are absolutely vital in ensuring that its member regard themselves as and so become people whose interpersonal relations are willed, who have an identity distinct from that of other individual, who are capable of autonomously choosing and revising their conceptions of good”⁵³.

This means that the Rawlsian prioritization of right is the elucidation of moral intuitions which are historically specific. The conclusions Rawls has drawn are not very different than that of liberal communitarians. The Rawlsian conception of justice is based on an ontological account of common Western metaethical narrative which endorses the primacy of liberty. MacIntyre recognizes liberalism as a genuine moral tradition. It is based on an authentic tradition and prefers the conception of the good life which is organically related to this tradition. It emphasizes its own conception of the good (liberty) wherever it has the power to do so, and does not rather should not tolerate other conceptions of the good which negates the realization of freedom as the only public (and man’s private) good. MacIntyre believes that liberal principles are not abstract/universal, rather they are

traditionally derived and culturally specific. Liberal theory is the voice of the Western tradition. He does not recognize the difference between the private and the public spheres which Rawls presumes as a theoretical precondition for the derivation of the principles of justice. MacIntyre believes that the public life of the Western tradition makes the private life of liberal society possible.

Concluding Remarks

We can summarize our discussion, as follows:

Sandel criticizes the Rawlsian detachment of self from its virtues, ends and values. He does not believe that the integrity of the self as Rawls claims lies in its antecedent individuation. He emphasizes the importance of community in the constitution of “self identity”.

MacIntyre stresses the organic relation between the communal participations and the derivation of the internal good from such participation. He rejects the view that moral utterances are necessarily emotivistic, in his view they must have historically or culturally grounded rational context.

Taylor is not satisfied with the Rawlsian conception of the person because of its theoretical incapacity to interpret it-self. He considers self-interpretation as the fundamental characteristic of human beings. He believes that self-interpretation is possible due to the participation in a particular kind of linguistic community.

The communitarians endorse primacy of liberty, individualism and pluralism on communitarian grounds. There is no non-liberal political emerging out of Sandel, MacIntyre and Taylor. In a nutshell for liberal-communitarians, community is the ontological precondition for selfhood. It is interesting to note that the conclusion they have deduced is not very much different than that of Rawls. They are justifying liberal value and institutions through communitarian perspective. The issue which radically differentiate them with Rawls is universalism and particularism. We can say that they have endorsed liberal argument on communitarian grounds rather than as universalist ideology.

References to Chapter - IV

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- ⁴ Ibid page 43
- ⁵ See Sandel M. Liberalism and the limit of Justice page 4
- ⁶ See Sandel, M.J. Liberalism and the Limits of justice. Op. cit., pp. 12
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- ³⁶ Mulhall, S. and Swift, A. *Liberals and Communitarians*. Op. cit., pp. 85.
- ³⁷ Ibid pp. 103
- ³⁸ Ibid p. 115
- ³⁹ Taylor Charles, *Sources of the Self, the making of the Modern Identity*. Op. cit., pp. 72.
- ⁴⁰ Ibid pp. 72.
- ⁴¹ Ibid pp. 69.
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- ⁴⁵ See Taylor C. Hegel, op. cit page 27
- ⁴⁶ Taylor Charles, *Sources of the Self, the making of the Modern Identity*. Op. cit., pp. 89.
- ⁴⁷ Mulhall, S. and Swift, A. *Liberals and Communitarians*. Op. cit., pp. 30.
- ⁴⁸ Ibid pp. 30.
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CHAPTER V

Post Modernist Interpretation of Rawls

Rawlsian work is generally considered as a re-birth of political philosophy. Rawls claims to have discovered rationally objective principles of justice necessary for the evolution of just political institutions. Certain postmodernist like Gray and others are skeptical about the claim that, “Rawls’s work has revived the enterprise of political philosophy in anything resembling its tradition¹”. Gray believes that the Theory of Justice is an attempt to revive the modernist project and it upto some extent ignores the ideological crises faced by the modernists due to the “collapse of the enlightenment project on a world – historical scale”². According to Gray Rawlsian theory of justice is an attempt to provide a framework in which “human beings will shed their traditional allegiances and their local identities and unite in a universal civilization grounded in generic humanity and a rational morality”³. The Rawlsian approach towards justice is different from that of Aristotle and J.S.Mill. Their conceptions of justice rested upon particular conceptions of the “good” which are organically linked with a particular kind of ontology presuming a particular conception of the self. Unlike these approaches the Rawlsian conception of justice is centered on the discovery of “right”. The “good” has trivial significance in the constitution of the just socio-political order. Rawls emphasizes that his conception of justice is basically political and not metaphysical. This means that Rawls intentionally ignores the underlying metaphysical issues. The conception of the self, which is extractable from his text is “an abstract conception of the person that has been voided of any definite cultural or specific historical inheritance”⁴. According to Gray such a conception of the self is embrionically Kantian but the major weakness of the Rawlsian conception is that it has been “conducted without any specific reference of metaphysical doctrine”⁵.

This new liberalism expounded by Rawls is claimed to provide a contentious and also a workable conception of justice. The principles of justice presume a procedural framework to institutionalize overlapping consensus. According to Rawls constitutional democracy provides a workable mechanism in which divergent and incommensurable conceptions of good are not only realizable but a peaceful co-existence of persons having different ontological presumptions is also possible. But for Gray the Rawlsian claim to provide an objectively just “practical agreement” is fictitious because this approach cuts itself loose from the contemporary intellectual trends. He thinks that the spirit of the age is post-modernism, which rejects universality in favour of particularity, objectivity in favour of relativity and conscious philosophy in favour of inter-subjective philosophy. Being a postmodernist Gray is not satisfied with Rawlsian which is appeared to be modernistic. Gray claims that the result of this modernistic approach is the project of securing practical agreement on principles of justice among metaphysically and historically neutered Kantian selves arouses little interest, inexplicably, among the political classes, or votes of the western world, or anywhere else”⁶. The modernist epistemological defense of constitutional democracy is fragile because the modernist brand of liberalism is in a state of ideological crises⁷. Further, the Rawlsian defence of liberalism in general and constitutional democracy in particular is rested upon his abstract conception of the person. This conception of the person is independent of history or ethnicity. Gray believes that Rawls equates impartiality and justice within his epistemological framework of the original position. In the Rawlsian system the impartiality of just socio-political order rests upon a neutral and abstract body of rights, which provide a mechanism for the Rawlsian person who has “only one concern a concern for (his) own good, which is not the good of any actual human being, but the good we are supposed to have in common, which (he) pursues subject to the constraints of justice that are considered to be those of impartiality”⁸. Gray believes that it is because of this particular conception of the person and “abstract principles of justice that the Rawlsian liberal version appears to be universalist”⁹.

Nagel believes that the Rawlsian obsession with impartiality compels him to presume an antecedently individuated self which transcends its cultural, historical, ethnic or communal attachments¹⁰. Such an abstract conception of the person is rejected by Gray who believes that communal attachments and historical specificities are inescapable, as “in the real world human beings think of themselves not as essentially persons having a diversity of contingent relationships and attachments but as being constituted by their histories and their communities with all their conflicting demands”¹¹.

Enlightenment thought in general and modern thought in particular considers rationality as a fundamental criterion to determine the truth-value or objectivity of a moral theory and a political stance. The modernist believes that the essence of man lies in his rationality. Thus “rationality” was considered to be the fundamental basis of agreement among persons. The intellectual outcome of this modernist assumption is that it is believed that the “theory guarantees that a moral belief that cannot be justified to the mass of mankind is irrational”¹². This absolutist or universalist posture of Enlightenment has developed an organic relation between self-perfection and public policy through the instrument of universally valid reason. Later on this universality was questioned. The modernist distinction between the upper and lower self (which justifies the rational distinction between morality and prudence) was also questioned by the philosophy of psychology and psychoanalysis. The psychologization of the philosophy of mind “has blurred the distinction between conscience and emotions of love, hate and fear, and thus the distinction between morality and prudence”¹³. Similarly due to the growth of sociological theory modernists claim to discover “Truth” by “the qua-rational being was also rejected”¹⁴. The intellectual outcome of the modernist critique is that the organic relation between the “Truth” and its rational justifiability has been broken. The effect of this break down has manifested itself in the polarization of liberal social theory. As a result of this polarization absolutist liberal theory has been contrasted with the relativistic (pluralistic) liberal theory. Those who are on the absolutist side try to prioritize a body of inalienable human rights and on the basis of this abstract system of rights they try to

resolve all moral / political disputes and contradictions. Rorty one of the prominent postmodernists, believes that such liberals insist on the objective validity of these absolute rights. For him the epistemological justification for such abstract right must be grounded in our metaphysical accounts and “we still need something to distinguish the sort of individual conscience we respect from the sort we condemn as fanatical”¹⁵. The absolutist liberal theory is basically Kantian. Kant provides the philosophical justification of the a-historical and transcendental self which is the foundational stone of absolutist liberal theory in general and right based liberals in particular. Such an a-historical conception of the antecedently individuated self was rejected by Hegel. Hegel considers the self to be a product of the historical process. He considers community as the ontological precondition of the self which is basically encumbered. These different conceptions of the “self” provide different paradigms to interpret the legitimacy and priority of human rights. Some believe in the prioritization of a-historical “human rights” like Dworkin and defend the priority of “right” over “good”. Some believe in the historical particularity of human rights and prioritize the “good” over the right. Rorty considers such communitarians i.e. Sandel Macintyre, Taylor etc as closer to Hegel and Horkheimer. Rorty also identifies a third group of thinkers whose position is not as clear as that of the other two groups. For instance Dewey believes that human history reveals that if a society is indifferent about the issue of a-historical moral truth then the chances of its survival are very limited. But since the “moral truth” which implies from Dewey’s work is “pragmatic” therefore people like Adorno, Horkheimer etc. claim that, although pragmatism is a modernistic approach even then “pragmatism is not a strong enough philosophy to make moral community possible”¹⁶.

Rorty acknowledges that the initial understanding of Rawls’ “A Theory of Justice” reveals that it is an attempt a rather traditional attempt to excavate the philosophical foundation of liberal politics in general and constitutional democracy in particular. The Rawlsian theory of justice seems to be a serious attempt to revitalize the “Enlightenment project”, which was initiated by

Kant. A Theory of justice is mostly interpreted as an intellectual attempt to legitimize the epistemological superiority of liberal politics and a-social individualism. **Rorty confesses “many people, including myself, initially took Rawls’s ‘A Theory of Justice’ to be such an attempt. We read it as a continuation of the Enlightenment attempt to ground our moral intuitions on a conception of human nature (and more specifically as a new-Kantian attempt to ground them on the notion of rationality)”¹⁷ (emphasis added).** He further claims that the later writings of Rawls¹⁸, have weakened the relation between Kant and Rawls (Rawls 1985,1995). These later writings detach Rawls from Kantian egoism and relate him to Hegelian historicism. In “Kantian constructivism” Rawls reconsiders the validity of the claim that the antecedently individuated self is the bearer or discoverer of the a-historical conception of justice. Rawls claims that “what justifies a conception of justice is not its being true to an order antecedent to and given to us, but its congruence with our deeper understanding of ourselves and our aspirations and our realization that given our history and the traditions embedded in our public life it is the most reasonable doctrine for us”¹⁹.

Rawls claims that “Justice as fairness” is a political conception of justice, which emerges from the democratic culture of a liberal society, thus it reflects the moral intuitions of that society. He believes that the traditional approach of political philosophy (to establish an ontologically grounded and epistemologically consistent political structure) is not workable in contemporary liberal societies. Therefore any philosophical attempt at system building on the basis of a-historical human nature, moral principles, meaning of life etc. will not serve the demand of fairness. Rawls claims that we have to rely upon conviction “such convictions as the belief in religious toleration and the rejection of slavery” and then “try to organize the basic intuitive ideas and principles implicit in these convictions into a coherent conception of justice”²⁰. Rorty believes that this rate of convictions in the constitution of the political conception of justice (which is recognized by Rawls in post-theory of justice text) makes his conception historically determined and anti-

universalist. In this light of post-theory of justice literature it is easy to detect that the flow of information or the availability of the factual data in the original position reveals that the “principles of justice” derived by the contractors are historically determined and culturally specific. Rawls categorically accepts the possibility of relativity in the principles of justice. In his own words: “we have to concede that as established beliefs change, it is possible that the principles of justice which it seems rational to choose may like wise change”²¹.

Rorty claims that Rawlsian prioritization of the right over the good has also been misinterpreted. He believes that Rawls has not derived the priority of the right over the good from the essence of human beings. Rawls’ right-based liberalism “is not (grounded on) antecedent philosophical grounds that it is of the essence of human beings to have rights, and then proceed to ask how a society might preserve and protect these rights”²². Furthermore the Rawlsian view emphasizes the need for philosophical toleration and considers it as an evolutionary version of toleration which was advocated by Jefferson (in case of religions toleration for the establishment of just and workable socio-political orders). By philosophical tolerance Rawls means the suspension or bracketing of the metaphysical or ontological discourse regarding the justification or prioritization of a particular conception of selfhood, moral order, meaning of life etc. In other words he is not interested in any ambitious search for a-historical, metaphysically grounded and epistemologically consistent fair principles of justice. Rorty believes that Jaffersion has used the framework of constitutional democracy to resolve religious disputes. Similarly Rawls is trying to resolve philosophical (i.e. ontological and epistemological) disputes through the framework of constitutional democracy in the name of philosophical toleration. He claims that justice as fairness avoids “claims about the essential nature and identity of (the) person”²³. Moreover justice as fairness presumes a mechanism of socio-political institutions, which remain neutral regarding the determination of the meaning of life and consider it as a private concern of the individual.

Rorty believes that Rawlsian theory of justice is a serious attempt to emancipate politics from the discourse of philosophy. He claims that European intellectual history reveals that philosophy in general and modernism in particular had repudiated epistemological justification of Christian metaphysics by the relatively superior epistemology of the Enlightenment. This prioritization of Enlightenment philosophy over religion has manifested itself in different dimensions of human knowledge i.e. knowledge about society, politics, history, culture, self-etc. He claims that it is generally presumed that the validity of a political theory and its corresponding institutions must necessarily be derived from a particular ontological account which is justified by its corresponding epistemology. In other words, ontological and epistemological accounts provide legitimation to political procedures and institutions. The Rawlsian theory of justice presumes a procedural conception of justice which is not only anti-universalist but it will gradually break the organic relation between political theory and its legitimation from ontologically grounded philosophical authority. The Rawlsian idea of “reflective equilibrium” is the only method to derive principles of justice and their corresponding institutions. Rorty claims that reflective equilibrium “discards (conclusions) drawn from the philosophical accounts of the self or rationality”²⁴. According to him, Rawlsian procedural conception of justice is only workable in a society, which institutionalizes the mechanism of “reflective equilibrium” to assess and analyze the credibility of a socio-political policy and the validity / possibility of practical agreement.

Rorty rejects Sandel’s claim that Rawls presumes an antecedently individuated self, which stands outside of history and culture. In the light of “post-theory of justice” texts He claims that the Rawlsian conception of the person is socially constructed and “the only theory of person we get is a sociological description of the inhabitants of contemporary liberal democracy”²⁵. He denies the claim that Rawls is also willing to discover a “vantage position” to assess the validity and fairness of the principles of justice. He specifically rejects

Sandel's claim that Rawls presumes an Archimedean position to judge the objectivity of the principles of justice. This provides an a-historical, a-social, culturally abstract and universal basis of social justice. He claims that the Rawlsian concept of the Archimedean point is not a space outside of history and culture. Rorty believes that the Rawlsian idea of the "Archimedean position" apparently creates an illusory association of Rawlsian analysis with the traditional discourse of morality and its impact on the conceptual analysis of socio-political theory²⁶. Further, the Rawlsian idea of "reflective equilibrium" detaches his approach from such "epistemologically oriented moral philosophy that was dominant, prior to the appearance of, A Theory of Justice"²⁷.

Rorty claims that in the light of Rawls' later writings²⁸, it is clear that Rawlsian conception of "self" is not a unified or essentialist conception, i.e. the "self" which is defined by Cartesian philosophy in general and Kantian philosophy in particular. Rawls does prioritize "self" over its ends, virtues, and conceptions of good but he does not mean that "there is an entity called "the self" that is something distinct from the web of beliefs and desires that the self "has"²⁹. The normative dimension of this prioritization is not dependent on any theory of self or conception of morality.

Rorty denies that Rawls is presuming an essentialist view of human nature and this precedence of "self" over its ends is derived from the essence of individual personhood. He also denies the basic assumption that Rawlsian prioritization of "the right over the good" is dependent on a particular conception of self or that this essence of the "self" lies in its truth discovering faculty i.e. rationality³⁰. The Rawlsian idea of "reflective equilibrium" is crucial to understanding the role of history and social practices, which enhance our ability to choose. It is because of this cultural specificity that Rawls denies that justice as fairness offers any a-priori defence of the Archimedean position rather "it sets up an Archimedean point for assessing the social system without invoking a-priori considerations"³¹.

According to Rorty the overtone of “post-theory of justice” literature produced by Rawls is that it does not provide a universalist defence of constitutional democracy and private property. The emphasis on the (a-metaphysical) political basis of justice as fairness opens up a new realm of criticism. Such criticisms identify an important dilemma of liberal political theory in general and Rawlsian theory in particular. This is the question whether we can ask “How man should be” in a democratic culture? If the answer is “no” (because in democratic society every one has a right to frame, revise and pursue his own conception of the good) than what is the justification of the dismissal of people like Nietzsche, Loyola etc. (fanatics). This obvious discrimination between fanatics and Sen goes against the spirit of constitutional democracy, (because this disqualification can not be justified without having a particular theory of human nature and being which explains how man should be?) Rorty acknowledges that “it is not clear, how to argue for the claim that **human being ought to be liberal rather than fanatic without being driven back on a theory of human nature**”³². Questions about the nature of man, priority of rights, objectivity or universality of good etc. are presumed to be prior and must be settled (ontologically and epistemologically) before establishing a political procedure. The second assumption (which is organically linked with the first) is that there is an essence of human being which can be discovered philosophically, and the socio-political mechanism must be compatible with that (philosophically identified) essence of human beings. Rorty claims that Rawls tries to emancipate himself from this traditional chain of assumptions, which were being held since the times of Plato. He claims that Rawls has deliberately broken the conventional link between epistemology and democratic politics. And whenever the question of precedence of one over the other is raised Rawls prioritizes democracy over philosophy.

Recent intellectual history reveals that modernists have failed to provide an all encompassing, absolutist and universal answer to the question “how man should be”. Rorty believes that raising questions is more important than the “futile” search for a

universalist and ultimate answer to the question. He believes that the activity of raising questions is fruitful only if the questions and their corresponding responses are culturally relevant because they are meaningful only in a particular linguistic matrix, which is culturally specific and historically determined. Rorty acknowledges that the reward of Enlightenment thought is the communal consensus on the values of tolerance or accommodation in the West. According to him modernist emphasis on a universalist and absolutist solution is the root cause of the intellectual stagnation of modernism. He thinks that the post-modern brand of liberalism does provide the intellectual space, which meets the demand of a truly pluralistic society and democratic culture (by presuming an anti-foundationalist or essence less conception of the self). Rorty claims that the discovery of universalist “truth” is not the problem raised by Rawls. Rawls has not consciously situated his “Theory of Justice” in any specific ontology or defended any particular epistemology according to Rorty. The reason for this is that Rawls is very much aware of the fact that the sustenance of unchangeable, absolute, and certain truth is not possible in contemporary democratic culture. Rorty believes that philosophy in general and modernism in particular resists and adversely affects the relativistic, dynamic, contingent and ever changing democratic process. Therefore the conflict between philosophically derived conclusions and democratically derived conclusions is inevitable. Rorty claims that for Rawls “when the two come in conflict democracy takes (precedence) over philosophy”³³.

Rorty claims that he (himself) provides a theory of the self which is compatible with Rawlsian theory of justice and democratic cultures. But he acknowledges that Rawls does not need such a theory because “such a theory does not offer liberal social theory a basis. If one wants a model of the human self, then this picture of a center less web will fill the need”³⁴.

In order to understand Rorty’s reinterpretation of justice as fairness (which obviously contradicts our thesis) we have to conceptualize Rorty’s interpretation of Rawlsian conception of

self. In this section we will try to understand Rorty's conception of self (which is claimed to be Rawlsian). This understanding helps us to identify the possible ontological shift in later Rawls (in the light of his recent writing).

Rorty categorically claims that Rawls prioritizes democracy over philosophy. This prioritization is meaningful within the context of a particular ontological account which compels Rorty to interpret Rawlsian theory of justice as a post-modern version of liberal democracy. Rawlsian silence in "A Theory of Justice" regarding his ontological and epistemological position and his recent writings are also claimed to be helpful to interpret him as a promoter of the post-modern brand of liberalism. Let us take a brief look at Rorty's conception of "self" which helps us to understand this post-modern interpretation of Rawls and his detachment from Kantian egoism.

Rorty believes that the distinctiveness of the self is defined in terms of the differences between oneself and the other i.e. the uniqueness of the self which "it" has created by itself. The Hegelian approach establishes an organic relation between self-consciousness and self-creation. Rorty claims that traditionally the continuities are much more important for philosophers hence poetry was also dominated by philosophy. Due to the impact of philosophy, poets also try to find "something common to all men at all time"³⁵. This urge to become a philosopher compels a poet to focus on continuities rather than discontinuities. This compulsion reveals an essential and inevitable tussle between philosophy and poetry. The essential characteristic of poetry is "an effort to achieve self-creation by the recognition of contingency"³⁶ and on the other hand in the path of philosophy there is "an effort to achieve universality by the transcendence of contingency"³⁷.

Rorty believes that same sort of tension has culminated in philosophy too, particularly since Hegel's time. Rorty considers Nietzsche as an important philosopher who follows the path of the romantic poet, in order to sacrifice universality and emphasis on the contingences. There are a growing number of

philosophers who are detaching themselves from the Hegelian pantheistic–idealistic–historicism and following Nietzschean discontinuity, contingency and self-creation. This tussle between poetry and philosophy and later on the victory of poetry over philosophy reveals the paradoxical co-existence of passion and reason (as insufferable constituents of individual's selfhood). The victory of poetry over philosophy is in fact the victory of the aesthetic over the rational. **The victory of contingencies over universality is the manifestation of the defeat of universally valid reason.** Rorty believes that the human thirst to discover a-historical Truth, absolute meaning of life, and universal conditions of human existence was initially quenched by prophets later on philosophers take the charge³⁸. He claims that the purpose of philosophy is to “give us a good, the only possible good namely the full recognition of that very necessity, the self-consciousness of our essence”³⁹. These pre-Nietzschean philosophers i.e. modernists consider contingencies of human life as irrelevant. The aesthetical variation in human emotions, the role of spatio-temporal specificity, the contingencies of circumstance etc. were considered as irrelevant to discover the essence of human beings, which is not only cross-culturally acceptable but which is also compatible with the metaphysical order of this universe. Nietzsche challenges and repudiates the traditional search for Truth (i.e. universal truth). Despite this Nietzsche has failed to abandon the possibility of self-knowledge. But unlike the traditional modernist approach he chooses the path of poetry to resolve the problem of self-knowledge through self-creation. This process of self-creation is not the realm of rational determinism rather a “process of coming to know oneself, confronting one's contingency”⁴⁰. In this process of self-creation through self-knowledge, the role of language is decisive. The self-creation through the novel and metaphysical expression of language is the path of self-knowledge. The self-discovery through the invention of new language seems to be paradoxical⁴¹, because language by definition is a public phenomena. Therefore self-creation through already established structures of language, symbols, signs, metaphases cannot provide something novel rather it is just a reproduction of what has already been said or discovered. In

response to this Rorty claims that the possibility of metaphorical re-description and reinterpretation opens a realm of novel and creative use of language or private use of public language. Novelty of language justifies self-knowledge through self-creation, because “the person who uses the words as they have never before been used, is best able to appreciate her own contingency”⁴². He further claims that novelty and contingency is realizable only in poetic expression. The philosophers always try to discover one true reality, an absolute, objective and universalist description of human nature. The philosophy in general and modernism in particular is an intellectual attempt to transcend contingency, which is in actuality an inseparable aspect of human existence according to Rorty. The modernist were motivated by the “will to truth” which is claimed to be realizable through universally valid reason. The Nietzschean and post-Nietzschean philosophers abandon the struggle to discover a-temporal and universal truth. They are not motivated by the “will to truth” rather by the “will to self-overcoming”. They emphasize the novelty and contingency of human existence which are eccentric and inescapable. Rorty rejects modernist interpretation of history as a struggle for a-historical and universal truth. He considers human history, “as a process of Nietzschean self-overcoming”⁴³. This process of self-overcoming is not governed by rationality rather novelty, creativity and contingency of self are the governing forces of the historical process.

Kantian philosophy according to Rorty is an attempt to divinize the self. In the Kantian framework, righteousness is not derived from the causally determined natural order, i.e. it is not something external. Righteousness is something “deep within us”. In simple words goodness is grounded with in a moral self. Thus righteousness can only be discovered through universally valid reason. This inwardness justifies the divinity of the self and also the a-historical and universal nature of moral truth. Rorty claims that Freudian psychoanalysis helps us to “de-divinize the self by tracking conscience home to its origin in the contingencies of our upbringing”⁴⁴. Freudian psychodynamic model emphasizes the importance of externalities (socio-

cultural) in the constitution of individual selfhood. In the Freudian paradigm morality is just the repression of our idish impulses. Rorty believes that Freud not only provide a comprehensive justification of de-divinization of the self, but he has also provided the detailed account of “the formation of conscience, his explanations of why certain very concrete situations and persons excite unbearable guilt, intense anxiety, or smoldering rage”⁴⁵. Rorty believes that Freudian analysis of consciousness shatters our faith in the possibility of objective morality, common human core, absolute universal principles of justice etc. Freudian conception of “reason” is very simplistic and is relatively closer to that of Hume, rather than Kant. Freud does not consider rationality as the essence of self or its central faculty. Kantian conception of self which rests upon the priority of upper (rational) self as a derivative agency of general (moral) principles is not compatible with Freudian analysis. Freudian psychologization of socio-cultural and moral phenomena eradicates the traditional distinction between, upper and lower, essential and accidental aspect of “self”. The conception of self which emerges from his psychoanalysis; “leaves us with a self which is a tissue of contingencies rather than an at least potentially well-ordered system of faulted”⁴⁶ Freudian approach is also helpful to examine the traditional demarcation between public and private spheres of life. This distinction is central to the identification of the domain of legality and morality i.e. the urge of social justice (which is the domain of state) and individual struggle for self-perfection (which is the realm of morality). Freud sharply distinguishes the two realm of “private ethic of self-creation and a public ethic of mutual accommodation”⁴⁷. Freud rejects the priority of one over the other and claims that there is no organic relation between these two realms of individual life. Rorty believes that Freudian analysis reinforces the Nietzschean agenda to emancipate individuals from the iron cage of rationality, as an a-historical transcendental subject. He claims that Freud also helps to “turn us away from the universal to the concrete from the attempt to find necessary truths, in eliminable beliefs, to idiosyncratic contingencies of our individual pasts”⁴⁸. Rorty believes that Freudian analysis not only “de-divinizes” the Kantian “self” but

it also challenges the role of pure reason in the constitution of self-unity, and in fact eliminates the mystical distinction between the upper and lower self. The theoretical outcome of this Freudian approach is that the modernist basis of social-justice, self-perfection and moral goodness is shattered. Freud provides an aesthetical basis of self-constitution and interpretation.

People like Rieff, Trilling and Leo Bersani believe that Freud considers poetry as an indigenous faculty of our mind. Through his unique method of psychoanalysis, Freud problematizes the issue of “fantasy” and its role in the constitution of individual selfhood⁴⁹. According to Rorty this indigenous faculty i.e. “poetry-making faculty” should not be confused with all romantic sense of intrinsic self-expression. In Freudian sense, it is our capacity to use language in a creative, novel and metaphorical manner. He believes that Freud tells us that every individual is capable of articulating his own unique fantasies by creative or metaphorical linguistic impression. Thus the social phenomena is just the literalization of metaphor which is “duplicated in the fantasy life of the individual”⁵⁰. The prevailing contingencies in such metaphorical articulation of our unique fantasies may be ridiculous but Freud tells us that it creates our sense of identity. It means that whenever we consider something as universal, it is just the accidental co-incidence of our individualistic metaphorical expressions, which are shared by the participants of a particular linguistic community. Thus we can say that “poetic, artistic, philosophical, scientific, or political progress results from the accidental coincidence of a private obsession with a public need”⁵¹. It simply means that philosophy in general and morality, politics and sciences in particular are the idiosyncratic fantasies of individual, and different ways of dealing with our own blind impresses. This interpretation of social phenomena, reveals that there is no rationally objective and absolute basis to prioritize one philosophical perspective over the other, one moral stance over the other, one political procedure over the other. They are all different ways to confront our own blind impresses. As far as the ontological or epistemological prioritization of one over the other is concerned, Rorty claims, “none of these strategies is privileged over others

in the sense of expressing human nature better”⁵². So what can we do? We can just aesthetically appreciate one over the other and there is no rational ground to undermine or over estimate one way of life, political procedure, social matrix and philosophical perspective over the other.

What does Rorty learn from the Nietzschean concept of self-overcoming and Freudian psychoanalysis? That philosophy is just a redescription of the idiosyncratic fantasies of an individual. It is because of this reason that he believes that the traditional distinction between appearance and reality should be abolished. He claims that we should consider description as a tool to understand our specificities rather than as a claim to discover reality in itself or the essence of being. As far as the prioritization of one tool over the other is concerned, Rorty believes that there is no absolute, objective and rational basis for such precedence. However individual’s order of preferences can be appreciated aesthetically. This aestheticization or playfulness demands a radical shift in our attitudes regarding the prioritization of one moral theory, political procedure, one conception of progress or well-ordered society etc. in short “One Right Description”. Rorty claims that Nietzsche and Freud are convincing us that this change of attitude cannot be possible until and unless our conception about “world and self” is “de-divinized”.

Rorty believes that human history is the history of man’s struggle against his own contingencies. He thinks that man receives nothing but pain in order to overcome his contingencies. Our relation to this world is not dependant on our “ability to overcome our contingency and pain”⁵³. He expects that this will help us to transcend the conventional struggle for self-discovery (essentialism and foundationalism). As far as the actualization of such a democratic culture or society (in which poetry has priority over philosophy, aesthetics has priority over rationality, contingency has priority over necessarily) is concerned he recognizes that he is not very much optimistic in this regard.

The conception of self derives from the above ontological analysis can be summarized as follows.

The self is basically contingent, essence less, encumbered and culturally specific.

The worth of the self is not determined by the continuities which explore something common to all men at all times i.e. universal or essential aspect of self. The process of self-creation by the recognition of contingencies determines the worth of the self. This priority of contingency over universality is not possible without abandoning the idea of universally valid reason. The abandonment of universally valid reason abolishes the traditional distinction between upper and lower self i.e. rational and empirical self, which demolishes the moral authority of modernist conception of self and eventually justifies the de-divinization of the self. The de-divinization of self eliminates the possibility of objective ordering (i.e. rational ordering) of values. Thus aesthetics is only criterion left to prioritize one value system over other regarding the accommodation of idiosyncratic desires of an individual.

On the basis of this ontological analysis Rorty implies that Rawlsian conception of self is not Kantian. In the light of post-theory of justice literature he reinterprets Rawlsian conception of self as contingent, encumbered and culturally specific. But unlike liberal communitarian he denies the possibility of any prioritization of moral goodness on objective grounds. He claims that Rawls is not interested to indulge himself in the tradition struggle for self-discovery through universally valid reason. Rawlsian recent writings, according to Rorty reveal that Rawls tries to break the organic relation between political theory, its corresponding institution and its ontological or epistemological legitimation. But interestingly this Rawlsian detachment of politics and philosophy is intelligible within the ontological account provided by Rorty. Rorty claims that Rawls not only detaches politics from philosophy but he also prioritizes politics over philosophy. Rorty claims that Rawls not only detaches politics from philosophy but he also prioritizes politics over philosophy. Rorty claims that Rawls' conscious silence (in A

Theory of Justice) regarding the ontological and epistemological justification of his political theory compels us to implicate as follows:

- a) Rawls is not satisfied with the modernist ontological / epistemological accounts to intellectually justify his theory of justice.
- b) Rawls' prioritization of democracy over philosophy or his insistence on the importance of "philosophical tolerance" reveals that he does not have any universal, absolute and all encompassing ontological justification for his political theory.

Concluding Remarks

In the end we can say that Rorty's reinterpretation of Rawlsian "Theory of Justice" (particularly in the light of Rawls's recent writings) is dependent upon Rortian ontological account. This reinterpretation is the manifestation of the intellectual defeat of modernist epistemology and ontology. It is the divinization of the modernist conception of "self" which not only sustains the priority of rationality over other human faculties but also provides the absolute basis of truth, goodness and justice. The post-modernist de-divinization of modernist conception of the "self" has dramatically relativized and aestheticized the whole discourse of truth, goodness and justice. It is important to note that Rorty claims that Rawls prioritizes democracy over philosophy but this precedence is meaningful within a specific philosophical context (i.e. post modern philosophy). The modernist justification of constitutional democracy (as method to discover universally valid principles of justice) is not compatible with such a philosophical context. This incompatibility is due to the rejection of the modernist (unified essential) conception of the self. Rorty considers democracy as a practical and viable political procedure to accommodate the idiosyncratic fantasies of individuals therefore democracy is acceptable, irrespective of the fact that no rational, objective and absolute defence of constitutional democracy is possible on epistemological grounds.

References to Chapter -V

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- ¹ Gray John , Enlightenment wake page (1)
- ² Ibid page (1)
- ³ This view supports our basic thesis that Theory of Justice does presume a universalist claim regarding the priority of individual autonomy through the institutionalization of constitutional democracy and private property economy. See Gray J. Enlightenment wake page (2)
- ⁴ This point is also reinforcing our thesis that Rawls does presume an antecedently individuated self. And this a-historical and a-cultural temperament of Rawlsian conception of “self” leads us to conclude that his conception of justice is of universalist nature see Enlightenment wake page (2)
- ⁵ It implies that there is no transcendence form “metaphysics” And it does play a decisive role in the determination of the meaning of life, virtues, ends, moral order and the fairness of just order. See page 2 Enlightenment wake by J. Gray.
- ⁶ Rawlsian science on metaphysical issues is at once both the strength and the weakness of his theory of justice. The strength is that it is open ended and numbers of interpretations of his theory are possible, which opens up a new realm of intellectual discourse. The weakness is that it seems to be groundless and shallow. It creates an impression that the epistemological defence of liberalism in general and constitutional democracy in particular is not possible. See page 3 Enlightenment wake by Gray
- ⁷ Gray has categorically claimed that “the modernist ideology of liberal academic nomenclature of western societies that are themselves in evident decline” see page (4) Gray Enlightenment wake.
- ⁸ Ibid page (4)
- ⁹ Ibid page (5)
- ¹⁰ See Nagel Thomas, Equality and partiality Oxford University Press 1971 p.177
- ¹¹ Ibid page (5)
- ¹² Rorty R. objectivity, Relativism and truth Philosophical papers Vol. I New York Cambridge University Press 1991 p. 176
- ¹³ Ibid page 176
- ¹⁴ Ibid page 176
- ¹⁵ It simply means that if metaphysical assumptions are not rationally justifiable even then we cannot ignore the role of our metaphysical and ontological assumptions in the constitution of our selfhood. See page 176 Ibid.

16 Ibid 177

17 Ibid page 184-185

18 Particularly “Kantian constructivism”, justice as fairness; political not metaphysical (1985) and political liberalism are the post. Theory of Justice text, which detache Rawls from Kant and relate him to Hegel and Dewey.

19 See in Kantian constructivism page 519

20 See Rawls, justice of fairness page y 230

21 See Rawls Theory of Justice page 548

22 Rorty R. objectivity, relativism and truth op. cit page 187

23 See Rawls, Justice as fairness, political not metaphysical in “Philosophy and public affairs” No. 14 (1985) page 225

24 Rorty R. objectivity, relativism and truth op. cit page 184

25 Ibid page 184

26 See Rawls, justice as fairness; political not metaphysical (1985) and more specifically in T.J. page 130

27 Rorty R. objectivity, relativism and truth op.cit page 186

28 See Rawls, Kantian constructivism and particularly Rawls, justice as fairness; political not metaphysical Rawls has discussed the conception of person, which has been misinterpreted by his critics.

29 Rorty R. objectivity, relativism and truth op. cit page 185

30 But let me remind you that our thesis is not that what kind of self Rawls is “presuming” (although we have tried to answer that question), the issue is that Rawls does presume a particular conception of self which affects:

- a) the architecture of original position.
- b) the conditions and the terms of contract.
- c) the nature and also the ordering of the principles of justice.
- d) the institutional realization of the principles of justice.

this means that justice as fairness does presume a particular ontological and epistemological context which may be culturally specific and historically determined if not universalist or a-historical. In short we can say that there is no “political conception of justice” which is purely “a-ontological”. It means that ontologically neutral conception of justice is not possible.

31 See Rawls, A theory justice, op. cit page 261-2

32 Rorty R. objectivity, relativism and truth op. cit page 190

33 Ibid page 192

34 Ibid page 192

35 Rorty R. contingency, Irony and solidarity, Cambridge New York, Cambridge University Press, page (25)

36 Ibid page 25

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- 37 Rorty view about poetry may be correct but his view of philosophy is seems to be narrow. This characteristic of course the defining characteristic of modernist philosophy but as far as whole philosophy is concerned it seems to me quite a narrow view and undermine the scope of philosophy. See Rorty contingency, Irony and solidarity op.cit page 25.
- 38 See Rorty R. contingency, Irony, solidarity op.cit 26
- 39 Ibid page 26
- 40 Ibid page 27
- 41 See Wittgenstein, L. Philosophical investigation, in which he denies the possibility of private language. However he acknowledges the possibility of the creation of new language games but according to him language by definition of is a public phenomena.
- 42 Rorty R. contingency, Irony, solidarity op. cit page 28
- 43 Ibid page 29
- 44 Ibid page 30
- 45 Ibid page 31
- 46 Ibid page 32
- 47 Ibid page 34
- 48 Ibid page 34
- 49 See Leo Bersani, Baudelaire and Freud, Berkeley university of California press 1977 page 138.
- 50 Rorty R. contingency, Irony, solidarity op. cit page 37
- 51 Ibid page 37
- 52 Ibid page 38
- 53 Ibid page 40

CONCLUSION

The objective of our thesis was to excavate the philosophical undercurrents of Rawls's theory of justice. We were interested to assess the credibility of the orthodox interpretation of Rawls in the light of his own work. In our initial three chapters we tried to interpret. "A theory of justice" (1971) as a universalist account of liberalism. Justice as fairness is presented as an intellectual attempt to establish the universality of liberal values and their corresponding institutions i.e. civil society, constitutional democracy and private property economy. This universalist account is claimed to be the evolutionary form of the works of Locke, Kant and Mill. In order to establish such an account it is claimed that Rawls presumes an unencumbered self, which detaches itself from its ends. This unencumberedness of the "self" justifies the universality of liberal values (i.e. autonomy, individuality and tolerance) and priority of the right over the good. As a result of this, liberalism appears to be a comprehensive moral doctrine, which considers the individual's freedom as a non-contestable "good". Since Rawls has not directly addressed the ontological and epistemological aspects of his theory of justice therefore it is possible to consider this approach as a misunderstanding of his theory of justice.

It is an established fact that post-theory of justice literature produced by Rawls has significantly changed the theoretical outcomes (i.e. conception of self, moral subjectivism / objectivism, universalism / particularism etc.) of his theory of justice which was presented in 1971. Interestingly his conception of justice has not changed for instance his commitment with constitutional democracy, private property economy, civil society and prioritization of the two principles of justice remains unshakeable. But what has been changed is the perspective, Rawls believes that "nearly all the structure and substantive content of justice as fairness... is unchanged when it is seen as

(a) political conception (but) the understanding of the view as a whole is very significantly shifted”¹.

Rawls acknowledges that his conception of justice has been interpreted as a comprehensive doctrine. According to him the reason behind this misinterpretation is that, “the distinction between comprehensive doctrine and a political conception is absent from theory”². It is generally believed that the significant change in the theoretical perspective of his theory of justice is a deliberate intellectual response of Rawls against the communitarian and post-modernist critique. No matter what are the reasons behind this shift, what is important, that Rawlsian reinterpretation of the theory of justice provides a clear indication that his presumed commitment to the Kantian subject and functional capacity of rationality to discover universally valid principles of justice has been shattered.

Since Rawls has not categorically claimed that justice as fairness is a comprehensive moral doctrine, it is only by implication that we can claim that there is an organic relationship between justice as fairness and a comprehensive moral doctrine. Therefore he can reject this charge (that justice as fairness does presume a specific ontological account and a comprehensive moral doctrine) and may consider it as a misinterpretation of his thought. In post-theory of justice literature the Rawlsian approach is relatively closer to that of the communitarians particularly their cultural specific interpretation of his theory of justice. But it will be unrealistic to consider Rawlsian acceptance of cultural specificity of liberal political theory and its corresponding institutions as a result of communitarian critique on justice as fairness. Because this shift had manifested itself in Dewey’s lectures (1980) which were predated the publication of major communitarian critiques.

Rawls insists that unlike utilitarianism, justice as fairness does not rely on any comprehensive theory of the good which provides the moral, ontological and epistemological justification that how man should lead his life. Rawls acknowledges that the theory of justice has a potential to be interpreted as a

comprehensive doctrine because by implication one can claim that “the members of a well-ordered society... accept the same conception of justice and also, it seems, the same comprehensive doctrine of which that conception is a part, or from which it can be derived”³. What Rawls is trying to emphasize is that there is no need to be committed to any comprehensive doctrine in order to accept justice as fairness and the moral claims which are associated with such political conception of justice.

Rawlsian silence on the issue of “Truth” and obvious indifferent attitude to provide any philosophical justification of “universally valid truth” is not because he is skeptical about the possibility of “Universal Truth”. The suspension of the issue of “objectively certain Absolute Truth” on the basis of skepticism is itself a philosophical stand point, according to Rawls which is directly in conflict with many reasonable philosophical doctrines. He is trying to institutionalize “philosophical tolerance” through the mechanism of political liberalism(1992). According to him in order to understand political liberalism one should “properly understood (that)... a political conception of justice need be no more indifferent, say to truth in morals than the principle of tolerance suitably understood, need be indifferent to truth in religion, we simply apply the principle of toleration itself”⁴. The communitarians claim that Rawls’ theory of justice (1971) is dependant upon a specific ontological account which justifies the priority of individual over his community. His principle of justice presumes an antecedently individuated conception of self. On the basis of this ontological account they (communitarian) claim that justice as fairness claims to have universally valid fair principles of justice. Lastly they claim that justice as fairness presumes a comprehensive moral doctrine compatible with such ontological account. In post theory of justice literature Rawls tries to reject these charges but interestingly during this process of denial he has markedly shifted from the position he actually had in theory of justice.

We can identify three significantly important shifts from the revision of the post-theory of justice text. Firstly Rawls revises the description of the contractors in the original position and

detaches its Kantian notion of subject. He tries to break the organic relation between moral power of self (individual), rational autonomy and the derivation of the fair principles of justice. Secondly, he acknowledges that justice as fairness is not a universalist defence of liberalism. In this way he accepts the particularity and cultural specificity of justice as fairness. Lastly he denies that principles of justice presume a comprehensive moral doctrine, and justifies the priority of democracy over philosophy.

In our next section we will briefly discuss Rawlsian position regarding the issues of conception of self, universality/particularity of the principles of justice and the relation between comprehensive moral doctrine and the derivation of the principles of justice. Initial exposition of the theory of justice reveals that justice as fairness is a morally grounded political defence of a-social individualism. Lukes and Milton Fisk etc⁵. try to establish that the Rawlsian description of parties in original position is the universalization of antecedently individuated self. Sandel⁶ believes that the constraints of the original position prioritizes a particular conception of self which is ontologically independent of its communal attachment. The framework of original position detaches it (i.e. self) from its ends.

New Rawls

i) Conception of Self

In post-theory of justice literature Rawls emphasizes that justice as fairness does not provide any ontological account of human existence. He acknowledges that justice as fairness presumes a conception of persons who are morally equal and free. But the conception is not derived from any specific ontological or epistemological account rather it derives from the political history of American society. He claims that the aim of political liberalism is to provide fair principles which are consistent with the political history of such a society. In political liberalism⁷ Rawls detaches his thought from Kantian conception of self. He acknowledges that the constraints of the original position give a false impression to the reader that original position prioritizes a

particular conception of self which is compatible with the rationale of the principles of justice. This creates an illusion that justice as fairness is an attempt to institutionalize any specific ontological and moral account. In political liberalism he claims that there is no need to provide an ontological or epistemological account of self in order to justify the constraints of original position. He thinks that at least for political purposes we should think of our selves as equally free, moral and independent citizen⁸.

He thinks that any other interpretation of person will be inconsistent with political culture and moral intuitions of his community. Thus the structure of original position presumes a “political conception of person”⁹ consistent with the political culture of at least American society. No doubt that this conception of person is very close to that of the Kantian autonomous law giver but in political liberalism Rawls consciously avoids to specify the ontological identity of his subject, because the conception of self emerges from such ontologically grounded identity is a transcendental subject rather a legal person (citizen). The legal person views itself as free and autonomous person but his identity according to Rawls, must be “independent from and not identified with any particular conception with its scheme of final ends”¹⁰. This means that the public identity of an individual is not affected by the ends a person has in his private life. Political liberalism provides institutional guarantees that the public identity of the individual is not affected by the changes in his private sphere of life. Rawls claims that individual may interpret, “ends and attachment very differently from the way the political conception supposes”¹¹. This contingency in individual’s ordering of values provides the grounds to conceptualize an antecedently individuated conception of self i.e. unencumbered self. Rawls does not directly address the question, whether he presumes an unencumbered or encumbered conception of self. But his recent writings suggest that the conception of person emerges from political conception of person is definitely not unencumbered. Because Rawls acknowledges that there are certain communal / cultural loyalties which cannot be transcended by a person. He

claims that political liberalism provides a workable framework to accommodate such communal loyalties which citizens “believe they would not, indeed could and should not, stand apart from and evaluate objectively”¹². This accommodation of communal attachments and the impossibility of impartial Archimedean position (i.e. a-historical or a-cultural perspective) to evaluate any conception of good objectively or neutrally is a very significant shift.

Rawls acknowledges the role of community in the constitution of self-hood. He specifically recognizes that in a well-ordered society citizens “may regard it as simply unthinkable to view themselves apart from certain religious, philosophical and moral convictions, or from certain enduring attachments and loyalties”¹³. Political liberalism does not deny encumbered personal identity but in political sphere the citizens must bracket their encumbrances. This means that in the public sphere the identity of the citizen must be independent of his encumbrances.

The theoretical corollary of this dichotomy between encumbered (private sphere) and unencumbered (public sphere) identities is that in public sphere (i.e. in political sphere) every citizen is regarded as a “self-authenticating source of valid claims”¹⁴. This means that the claims of all citizens carry equal weight. The weight of the claim is not judged by its moral, religious or aesthetical significance. In other words the authentication of the claim has nothing to do with its truth value, moral, spiritual or religious or even its philosophical importance but what is significant, is that the claim is asserted by a citizen. Thus the public life is not structured by our encumbrances. We have to bracket our encumbered self and we should act as legal person (i.e. the person defined by the body of rights). The question arises if the public sphere is not structured by the encumbrances of the members of that community then what are the constituents of the public sphere? And is it ontologically possible to establish a public order independent of our encumbrances. Rawls does not discuss this aspect but he considers this dualism as a defining characteristic of pluralistic societies. He claims that this dichotomy of identities, “originates in the special nature of democratic political culture”¹⁵.

What is important in this regard is that Rawls does prioritize the identity as citizen over the identity as person. But what is the justification of this prioritization. Because one may ask why should not our political identities express our ontological, religious or communal attachments, which we value in our private lives. Why does the private and public sphere necessarily dichotomize? How does personal identity remain unaffected by the identity as citizen. The answer is simple that Rawlsian prioritization of identity as citizen is derived from the historical experiences of a particular political community. The modern democratic culture presumes a plurality of moral, ontological and religious views. The defining characteristic of such a culture is that, the people realize that spiritual peace, moral purity, religious faith etc. are just things that people want but it does not justify the prioritization of any particular moral, religious or philosophical doctrine through socio-political institutions. This reflects the triviality of the individual's encumbrances. This culture also recognizes the epistemological incapacity or crises of Western civilization to philosophically prioritize any one comprehensive doctrine over another. Thus Rawlsian dualistic identity mechanism is an intellectual attempt to accommodate this epistemological crises which shatters the philosophical foundation of constitutional democracy.

Rorty believes that Rawls is not interested in any extra-political justification of liberal polities. He acknowledges that in "theory of justice" (1971) it looks as if Rawls is providing a universalistic, a-historical defence of modern liberal societies. According to Rorty, "many people, including myself, initially took Rawls' "A theory of justice" to be such an attempt. We read it as a continuation of the enlightenment attempt to ground our moral intuitions on a conception of human nature (and more specifically as a neo-Kantian attempt to ground them on the notion of rationality"¹⁶. But he claims that in the light of post-theory of justice literature Rawls has revised his position. New Rawls' argument is obviously "historicist and anti-universalist"¹⁷. Rorty believes that Rawls is rationalizing the values and institutions which are compatible with American liberal culture.

Rawls has not consciously situated his conception of person in any comprehensive doctrine, because he wants to segregate the “public political realm” of the individual’s life from the “extra political” sphere of human existence (in which issues like meaning of life, value of moral, spiritual or religious goodness, virtues etc. are significantly important and meaningful). Rawlsian emphasis on the conception of person i.e. “citizen” is appeared to be pragmatic because it serves two purpose simultaneously. Firstly it provides practical or workable basis to reach political consensus. Secondly it provides a legitimate basis to respect liberal values of individual liberty and formal equality which reflect the moral intuitions of a particular society. Interestingly both purposes can be served and institutionally actualized without indulging ourselves into any specific ontological or epistemological discourse.

ii) **Universalism / Particularism**

In *A Theory of Justice* (1971) Rawlsian contractually structured society provides the theoretical justification of a-social individualism, because it is presumed that individual is capable of determining ends, and conceptions of good independent of community. The prevailing a-social individualism apparently prioritizes the individual over society. This prioritization is unacceptable for communitarians. The communitarians argue that Rawlsian idea of original position provides an a-social realm to discover abstract principles of justice which are cross-culturally applicable. They claim that this a-social individualism overlooks the role of community in the derivation of the individual’s conception of good. It also undermines the importance of collective good and the communally grounded political ideals.

In response to all these charges Rawls claims that the idea of original position has intellectually been dramatized by his critics by interpreting it as a philosophical attempt to justify a-social individualism. In post-theory of justice literature Rawls tries to make it clear that the purpose of the original position is to theoretically conceptualize the fundamental unit of constitutional democracy i.e. citizen. Rawls believes that justice as fairness is

essentially a public conception of justice. However the original position does impose certain constraints which ensure the area of non-interference of each individual. He claims that he is not interested to resolve the paradoxical problem of individual / society contradiction. He just wants to establish the conditions of formal equality for the derivation of fair principles of justice.

In his later writings he emphasizes that he does not deny the importance of society because the fairness of the conception of justice is dependent upon its public recognition and justifiability. Thus the prioritization of “right over good” or “individual freedom” is publically recognized and reflects the moral intuitions of at least Western world.

The obvious organic relationship between theory of justice and theory of rational choice provides firm grounds to interpret justice as fairness as individualistic conception of justice which eventually collapses into extreme form of egoism. Rawls acknowledges that, “it was an error in theory (and a very misleading one) to describe a theory of justice as part of a theory of rational choice”¹⁸. In his later writings Rawls differentiates “rational” from “reasonable” which has not been clearly identified in theory of justice (1971). He claims that the “rational” is in fact the actualization of one’s own interests through a coherent system of social cooperation. So being rational means being self-interested. On the other hand “reasonable” determines the parameters of the original position. Through reasonable constraints he determines the scope and function of ‘rational’. The constraints in the structure of original position incorporate the moral intuitions, convictions and collective shared experiences of democratic society. Therefore his use of theory of rational choice according to Rawls is not the ultimate ground to interpret his theory of justice as a universalist defence of a-social individualism. In Post-theory of justice literature Rawls is more concerned with the significance of institutions. In a series of articles¹⁹ Rawls tries to establish an interdependent relation between “individuals” and “institutions”. He claims that in a well ordered society the interests of the individuals are dependant, “upon existing institutions and the

principles of justice they satisfy”²⁰. This organic link between the actualization of individual’s interests and institutional structure of society reveals that the parties in the original position are not transcendental subject rather they are the participants of a particular social matrix. In this regard significance of society in the establishment of “contract” is unquestionable. Rawls claims that the institutional framework presumes contract as a contract between two social actors. (i.e. participants of a democratic culture who respect and ensure the sanctity of fair institutions).

Rawlsian prioritization of the idea of “Reasonable” is also very crucial to understand the cultural specificity of political liberalism. In Rawlsian framework being rational means being self interested. On the other hand by “Reasonable” he means maximization of one’s interest along with the recognition of fair terms of cooperation. So it appears that “reasonable” is not an individual’s trait rather it is a cultural specific phenomenon. It depends upon the communal recognition of the fair terms of cooperation. Otherwise the self-interestedness of an individual cannot be legitimately circumscribed within a system of social cooperation.

According to Rawls “Reasonable” frames and subordinates the Rational²¹. The original position imposes certain constraints (which Rawls considers as reasonable) which limit or order individual’s desire to maximize his own interests. As a result of this, the principles (for the basic structure of society) which the contractors choose in original position determine the pre-ambls of the constitutions. The nature of constitution determines the nature and parameters of legislation. Thus the four-stage sequence institutionalizes a successive sequence of constraints. Rawls believes that in every stage the individuals behave rationally but their rationality is successively constrained by the conditions of reasonableness. We find an obvious inverse relationship between the institutionalization of the conditions of reasonableness and the elimination of the veil of ignorance (in his four stage sequence). This implies that the conception of rationality is not transcendental. This subordination of rationality

(through the constraints of reasonableness) makes it cultural specific. The priority of reasonableness undermines the possibility of a-historical or a-cultural generalization. It shows at least in political liberalism he is not striving for absolute universality.

Rawls acknowledges that justice as fairness presumes an individualistic approach but it does not mean that it ignores social dimension of human existence. In Dewey's Lectures²² he categorically claims that he is trying to find "not universal principles of justice, but principles appropriate for modern societies like the United States"²³.

In political liberalism Rawls is much more interested to formulate the reasonable basis for reaching an agreement consistent with the Western public conception of justice. He is not interested in perfectly proper consensus, which is acceptable for all societies. In political liberalism he "concedes that this consensus has to be that which is found not in universal society but in a more restricted group"²⁴. It means that principles of justice are not just for all communities, but for a specific political community.

Rawls claims that although justice as fairness rejects Kantian transcendental Idealism (because it provides the basis of a comprehensive doctrine) but "Kantian moral constructivism can endorse political constructivism (presented by Rawls) as far as it goes"²⁵. Rawls claims that although political liberalism institutionally protects the values (i.e. liberal values and also their corresponding institutions) which reflect the moral intuitions of a particular community, interestingly he thinks that such political theory is equally consistent with Kantian liberalism which justifies the universality of liberalism. It implies that if political liberalism (and its corresponding institutions) is not a universal political theory even then it provides objective grounds for the actualization of just, fair and workable socio-political arrangement for at least modern-liberal democratic-cultures. Thus political liberalism guarantees such a public order, which is "as important for political liberalism as is

the endorsement of the rational intuitionist”²⁶. In other words if Kantian conception of justice is not acceptable for all communities or cultures even then it is compatible with “justice as fairness”. In Kantian constructivism he tries to defend the values of individual freedom, individuality and tolerance on cultural specific grounds. It means that the priority of individual freedom, sanctity of privacy and tolerance are derived from the specific history of modern western societies. This prioritization reflects the moral intuitions of such societies. But the way he analyze this particularity it appears that Rawls believes that “Kantian conception of justice as fairness is (at least) right for us”²⁷ i.e. for liberal democratic societies. Rawls claims that justice as fairness presumes a methodology to unveil already existing ideas (imbedded in democratic culture) of liberty, person and social cooperation in order to formulate model conceptions of a well-ordered society and moral person. He considers original position as a mediating device to “establish the connection between a moral person and a well-ordered society”²⁸.

It is important to note that the idea of a well-ordered society presumed by Rawls is characterize as:

- (1) Society, which must be regulated by public conception of justice.
- (2) Its members must view themselves as equally free moral persons.
- (3) It must be stable and must be governed by public sense of justice.

The above-mentioned features according to Rawls are implicit in American political culture. Thus justice as fairness is the rationalization of American political history, its ideas, virtues and institutions.

iii) **Justice as fairness as a Comprehensive moral Doctrine**

Another controversial aspect of the theory of justice (1971) is, to interpret justice as fairness as a comprehensive moral doctrine. Rawls provides a detailed account of a hypothetical choice situation to choose fair principles of justice by reconciling

traditional contractarian model and Kant's moral philosophy. Rawls acknowledges that contractarian model presumed in *A Theory of Justice* (1971) has the potential to provide a comprehensive philosophical doctrine. Although his primary concern was the derivation of the principles of justice (for the basic structure of society). He acknowledges that contractarian model provides the "choice of more or less an entire ethical system that is, to a system including principles for all the virtues and not only for justice"²⁹. On the other hand he considers himself as Kantian³⁰. Therefore it is widely accepted (by implication) that Rawls presumes a comprehensive moral doctrine and ontological account, which directly affect the constraints of the original position, description of the parties, nature of the fair principles and institutions (which are derived from those principles). In post-theory of justice literature Rawls acknowledges that, "certain faults of exposition as well as obscure and ambiguous passages in "*A theory of justice*" invite misunderstanding"³¹. Rawls denies that he is providing any comprehensive moral doctrine. He considers it as a misunderstanding of the theory of justice according to Rawls. The reason of this is that the distinction between comprehensive and political conception of justice is not clear in theory of justice. He claims that justice as fairness is an attempt to provide an institutionally possible political procedure for the derivation of practical agreement. This practical agreement ensures that "society's main institutions and how they fit together into one scheme of social cooperation can be examined on the same basis by each citizen what ever that citizen's social position or more particular interests"³². He categorically claims that "the aim of justice as fairness as a political conception is practical, and not metaphysical or epistemological"³³.

Rawls' conception of justice is claimed to be political, but he does consider the importance of comprehensive moral doctrine (which individual possess) and its role in individual's order of preferences. He believes that participation in the institutional framework of political liberalism does not affect one's commitment with the comprehensive doctrine individual possess to order his private life. According to Rawls political liberalism

remains neutral regarding the prioritization of any comprehensive view and provides a workable procedure for adjusting all incommensurable comprehensive doctrines. Political liberalism according to Rawls “present itself not as a conception of justice that is true, but one that can serve as a basis of informed and willing political agreement between citizens viewed as a free and equal person”³⁴.

In this way on the one hand Rawls abandons the question of “truth” on the other hand he insists on the need of philosophical tolerance. Both these demands are organically linked with each other and opens up a new realm of discourse. The political liberalism is an attempt to establish a realm in which people will philosophically tolerate each other because there is no absolute certain and universal truth. The abandonment of the traditional search for “absolute truth”, dramatically changes the nature of discourse and its theoretical outcomes. It relativizes the nature of ethical theory, norms and value structure presumed by an individual or a community.

He acknowledges that the failure of modernist agenda to discover absolute, certain and universal truth through universally valid reason. According to him, “philosophy as the search for truth about an independent metaphysical and moral order can not ... provide a workable and shared basis for a political conception of justice in a democratic culture”³⁵. Rawls’ insistence on philosophical tolerance is the recognition of the fact that philosophy does not provide any all-encompassing and workable comprehensive doctrine (which is acceptable for all equally rational, free and self-interested individual’s). Because there is no substantive, rational grounds to demonstrate the priority of one comprehensive doctrine over other. Therefore we should tolerate all comprehensive doctrines as equally true. Or it means that we should prioritize democracy over philosophy. As far as the justification of this prioritization is concerned, Rawls will claims that democracy provides a workable socio-political structure despite this fact that we haven’t any philosophical justification of this prioritization. But interestingly Rawls does not consider the prioritization of democracy over philosophy as

the prioritization of one comprehensive doctrine over the other. He thinks that this prioritization is derived from the historical experiences of a liberal democratic culture.

Thus Rawlsian political conception of justice detaches Rawlsian liberalism from that of Kant and Mill because both of these views presume comprehensive doctrine. According to Rawls, Kant prioritizes individual autonomy and “connecting it with the values of Enlightenment”³⁶. In Kantian liberalism the precedence of individual autonomy is justified by the universally valid reason and the thought derived from such prioritization is of universalist nature. On the other hand, Mill idealizes “individuality” and connects “it with the values of modernity”³⁷. Mill’s prioritization of individuality presumes a particular philosophy of mind which establishes an organic relation between the individual’s liberty and utility maximization. This provides a justification of a hierarchical system of values and moral order. Rawls believes the liberal thought that emerges from these thinkers is more than political because it provides a comprehensive view of human life. It provides a firm basis to determine what ought to be and what ought not to be. Rawls considers these approaches as impractical because, “these two liberalisms both comprehend far more than political. The doctrines of free institutions rest in large part on ideas and values that are not generally or perhaps even widely shared in a democratic society”³⁸.

Rawlsian rejection of above mentioned brands of liberalism is very revealing because it is in fact the abandonment of “liberalism” as a comprehensive doctrine. Rawls tries to emancipate liberal thought from the sphere of comprehensive moral philosophy. This implies that the universalist defence of liberalism is not only epistemologically or ontologically impossible but also impractical. Rawls introduces a new brand of liberalism which is independent of any moral or comprehensive doctrine. This version of liberalism stresses the importance of tolerance and plurality of incommensurable conceptions of good. The core concern of this version of liberalism is to provide a workable mechanism to ensure stability and the social unity.

According to Rawls “in constitutional democracy one of its most important aim is presenting a political conception of justice that can not only provide a shared public basis for the justification of political and social institutions but also helps to ensure stability from one generation to the next”³⁹. Rawls’s over emphasis on the issue of stability and social unity apparently undermines his commitment with individual’s liberality and its absolute prioritization. In post theory of justice literature he has not defended the priority of liberty per-se rather he is interested in certain fundamental liberties, according to him, “through out the history of democratic thought the focus has been on achieving certain specific liberties and constitutional guarantees, as found, for example, in various bills of rights and declarations of rights of man. The account of basic liberties follows this tradition”⁴⁰. It is because of this Rawlsian commitment with stability and social unity; new Rawls is interpreted as Hobbesian “since he now ties his conception of justice, not to autonomy or individuality but order”⁴¹. In this new brand of liberalism Rawls is not dependant on Kantian conception of self regarding the defence of the priority of right over the good. Sandel believes that this conscious detachment from Kantian egoism makes Rawls’ theory more vulnerable for other criticism. For instance it might be argued that political liberalism ensures the priority of right over good, this prioritization is infact a claim about the “good” which becomes the defining characteristic of modern democratic societies i.e. “pluralism” which can not be actualized in absence of the institutional protection of the priority of right over good.

Rawls claims that in political conception of justice we have to bracket our moral, religious or philosophical doctrines. This bracketing is justifiable either when we become skeptic about the truth-value of these comprehensive doctrines but interestingly Rawls claims that the political liberalism is not rested upon the assumption that truth value of all comprehensive doctrines are doubtful. It means that atleast some of them might be true than what is the moral justification to treat all of them equally. Secondly if the comprehensive doctrine applies to personal life of the individual which is infect the extra political sphere then what is the justification to outweigh it because Rawls

categorically claims that, “political values normally outweigh what ever non political values conflict with them”⁴². If the political values and non-political values address different subjects (i.e. political values apply to the basic structure of society and non-political values i.e. moral, religious values apply to the personal life of the individual) then how do they conflict with each other. It obviously means that the prioritization of right over good is not an a-moral claim. The prioritization of pluralism and principles of justice are rested upon a particular moral psychology which has ironically not comprehensively been discussed by Rawls⁴³.

It is also important to note that Rawls claims that the state remains neutral regarding the question of “good” but not to the question of “right”. Any particular conception of good which contradicts the prioritized body of right will be suppressed by the state. Rawls uses the term “good” in atleast five different senses for instance the idea of primary good, rational usage of the term good, collective usage of the term good (in which he talks about permissible conceptions of good), political usage of the term good and lastly the conception of good of a well-ordered political community. The primary goods are claimed to be the neutral mean to actualize any rational plane of life. When he explores the permissible conceptions of good than the claim of anti-perfectionism and neutrality of the state starts shattering. When ever we talk about permissible conception of good than obviously we are segregating them from non-permissible conceptions of good. Permissible conceptions of good are those which are not in conflict with the prioritized system of rights. Non-permissible conceptions of good are obviously contradict the system of rights. Thus Rawlsian state does not remain neutral regarding the realization of non-permissible concepts of good. It implies that state is not perfectly neutral. Rawlsian public order presumes an order or hierarchy of values which is derived from the prioritized body of rights.

Although political liberalism guarantees the plurality of incommensurable conceptions of good but it will be illegitimate to question the fundamental political and constitutional issue,

with reference to one's comprehensive doctrine according to Rawls. It implies that political sphere is an a-moral sphere which can not be analyzed on the basis of comprehensive doctrines presumed by individuals. Rawls insists that in order to sustain social unity we have to bracket our comprehensive doctrine (in political sphere) than the question arises that what is the guarantee that this so-called suspension eventually leads us to social unity. Secondly what is the justification to consider social cooperation so important, "as to outweigh any competing interest that could arise from within comprehensive moral or religious view" ⁴⁴. Political values can not be actualized in vacuums. They must have religious, moral, ontological underpinnings thus it would be impossible rather impractical to resolve all political controversies through the motive of social cooperation and stability. People very soon will ask social cooperation for what? because social cooperation is not end in itself, it is a mean to realize certain ends. Therefore people will necessarily ask the legitimacy of those end. The legitimacy of the ends is derived from the comprehensive doctrines (presumed by the individuals). Because individuals define their interests and ends in reference to their comprehensive doctrines. For instance "the right of abortion" is a political matter, which infect causes significant political controversy. The root cause of this controversy is not political rather it emerges from the grave moral, religious and ontological doctrines. Thus the institutional protection or suspension of "abortion right" is a political decision but it is organically linked with the comprehensive doctrines individuals have.

The following are the important points, we have concluded from our thesis.

- (1) In theory of justice Rawls was defending liberal position through a moral doctrine and a moral tradition that can be generally termed as Kantian and contractarian.
- (2) Due to this Kantian influence Rawls does presume a comprehensive doctrine which justifies the priority of moral autonomy over any other conception of goods or virtues (see into. PL Xiiv-Xiv).

- (3) This Kantian influence justifies unified conception of self, moral objectivism and universalism.
- (4) In political liberalism Rawls tries to prioritize the political identity of an individual over his personal identity. He revised the description of the parties in original position and detaches it from Kantian egoism.
- (5) As a result of this he prioritizes political autonomy over moral autonomy and claims to emancipate his political theory from the iron cage of comprehensive moral doctrine.
- (6) In this process of emancipation his philosophical position slips between post modernism and liberal communitarianism.
- (7) In post theory of justice literature Rawls' commitment with the priority of the two principles of justice and their corresponding institutions: i.e. constitutional democracy private property economy and interventionist state remains unshakable.
- (8) In his later writings his perspective regarding the issue of justice has been changed as a result of this the theoretical outcomes (i.e. conception of person, moral subjectivism / objectivism and universalisms / particularism) of his theory of justice have also been changed.
- (9) He has accepted the cultural specificity of political liberalism, thus by implication he has retreated from the universality of liberalism.

References to Conclusion

¹ Rawls John, “the priority of right and Idea of the Good”. *Philosophy and public affairs* 17, 4 (1988) p. 254

² *Ibid* page 254

³ Rawls John, “The Domain of the Political and overlapping consensus”, *New York University Law Review* 64, 2(1989) page 248

⁴ Rawls John, “The ideas of overlapping consensus”, *Oxford Journal of Legal Studies*, 7,1 (1987) p. 13

⁵ see in Lukes Steven, *Individualism* (Blackwell Oxford 1973) and Fisk Milton, *State and the Market in Rawls*, in *Rawls: the Agenda of social justice* (ed.) by B. Ray Anamika publishers 2000 p. 241-256.

⁶ See Sandel Michal, *Liberalism and the limits of justice*, Cambridge university press. Cambridge 1982 p.2-15

⁷ The thought which emerges from Rawls’ recent writings is termed as political liberalism. The major text in this regard is his book “political liberalism (1992)” Columbia State University press.

⁸ See Rawls John, *Political liberalism* op. cit p. 29-35.

⁹ *Ibid* p. 29

¹⁰ *Ibid* p. 30

¹¹ *Ibid* p. 31

¹² *Ibid* p. 31

¹³ *Ibid* p. 31

¹⁴ *Ibid* p. 32

¹⁵ *Ibid* p. xxi

¹⁶ Rorty Richard, *Objectivity, Relativism and Truth*. Philosophical papers vol. 1 Cambridge university press. Newyork 1991 p.184-185.

¹⁷ Rorty Richard, *Contingency, Irony and Solidarity*. Cambridge University press Newyork 1989 p. 257.

¹⁸ Rawls John, *Justice as fairness: Political not metaphysical* (1985) in *Rawls and the Agenda of social justice* (ed.) B. Ray Anamika publisher Delhi 2000. p71

¹⁹ In number of articles for instance *Fairness to goodness* 1975, *The basic structure of subject* 1978 and *A well-ordered society* 1979, he tries to establish an interdependent relation between individual and institutions

²⁰ See Rawls John, “Fairness to Goodness”, *Philosophical Review*, 84 (1975) p.547.

²¹ See Rawls J. “Social unit ya dprimacy good”, in *utilitarianism and Beyond* A.K Sen and B. Williams (eds.) Cambridge. Cambridge University press 1982. p. 55

²² See Rawls J. “Kantian constructivism in Morla theory”, *Dewey Lectures*, *journal of philosophy* 7,9 (1980) p. 535

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- ²³ Ray Brine, "Re-Reading Rawls", in Rawls and the Agenda of social justice (ed.) B. Ray Anamika publishers New Delhi p. 46
- ²⁴ Ibid p. 47
- ²⁵ Rawls J. Political liberalism op. cit p. 100
- ²⁶ Ibid p. 100 Ray
- ²⁷ Ray B. Re-Reading Rawls op. cit p.47.
- ²⁸ Rawls J. "Kantian Constructivism in Moral theory" op. cit p. 520
- ²⁹ Rawls J. A Theory of Justice (1971) op. cit. p. 17
- ³⁰ See Ibid p. 251-257
- ³¹ Rawls J. Justice as fairness. Political not Metaphysical op. cit p. 70
- ³² Ibid p. 74
- ³³ Ibid p. 74
- ³⁴ Ibid p. 76
- ³⁵ Ibid p. 76
- ³⁶ Rawls J. The Idea of an overlapping consensus" op. cit. p. 6
- ³⁷ Ibid p. 6
- ³⁸ Ibid p. 6
- ³⁹ Ibid p. 1
- ⁴⁰ Rawls J. Social unity and primary goods op. cit p. 6
- ⁴¹ Ray B. Re-Reading Rawls op. cit p. 58
- ⁴² Rawls J. Political liberalism op. cit. p. 146
- ⁴³ See Kolosko 1994, p. 1889 quoted in Re-reading Rawls by B. Ray op. cit p. 60
- ⁴⁴ Ibid p. 59

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See Rawls J. The Domain of Political overlapping consensus.

See Peffer, Marxism, Morality and social justice. Preston university pres, Preston 1995 in which he tries to prove that Rawls is a socialist.

A theory of justice by J. Rawls (1971)

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